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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

[Two Sessions]

WHEN: July 9, 1996 at 9:00 am, and
July 23, 1996 at 9:00 am.

WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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Monday, June 24, 1996

FEDERAL RESERVE SYSTEM

12 CFR Part 219

[Regulation S; Docket No. R–0906]

Reimbursement for Providing Financial Records; Recordkeeping Requirements for Certain Financial Records; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; correction.

SUMMARY: This document contains a technical correction to the final rule that was published June 12, 1996 (61 FR 29638). The rule implements the requirement under the Right to Financial Privacy Act (RFPA) that the Board establish the rates and conditions under which payment shall be made by a government authority to a financial institution for assembling or providing financial records pursuant to RFPA.

EFFECTIVE DATE: July 12, 1996.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boutilier, Senior Counsel (202/452–2418), Legal Division, Board of Governors of the Federal Reserve System, Washington, DC 20551. For users of the Telecommunication Device for the Deaf (TDD), please contact Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of this correction adopted a proposed rule that was subject to public comment, published December 20, 1995 (60 FR 65599).

Need for Correction

As published, the final rule contained a non-substantive, technical error that is in need of clarification.

In final rule document 96–14688, beginning on page 29638 in the issue of Wednesday, June 12, 1996, make the following correction.

§ 219.6 [Corrected]

On page 29641, in the second column, in § 219.6, paragraph (b), 14th line, the phrase ''of the notice to'' is removed.

By order of the Board of Governors of the Federal Reserve System, June 18, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–15877 Filed 6–21–96; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–25; Amendment 39–9651; AD 96–12–09]

RIN 2120–AA64

Airworthiness Directives; PTC Seating Products Division, B/E Aerospace, Model 950 Series Passenger Seats Equipped With Footrest Assembly

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to PTC Seating Products Division, B/E Aerospace (PTC), formally known as PTC Aerospace, Model 950 series passenger seats with footrest assembly. This amendment will require the removal of the footrest assembly arms and the installation of a conversion kit on each PTC Model 950 series passenger seat equipped with footrest assembly. This amendment is prompted by two incidents of finger injuries that occurred during attempts to either extend or retract the footrest system on PTC Model 950 series passenger seats equipped with footrest assembly. The actions specified by this AD are intended to prevent injury to hands during the operation of a PTC Model 950 series passenger seat equipped with footrest assembly.

DATES: Effective July 29, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register July 29, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from B/E Aerospace, PTC Seating Products Division, 607 Bantam Road, Litchfield, CT 06759. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Noll, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7160, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to PTC Model 950 series passenger seats equipped with footrest assembly was published in the Federal Register on October 2, 1995 (60 FR 51375). That action proposed to require the removal of the footrest assembly arms and the installation of a conversion kit on each PTC Model 950 series passenger seat equipped with footrest assembly.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter states that the compliance time of 9 months should only apply to the footrest on first class Model 950 seats, stating that the potential problem with the linkage only occurs on the first class Model 950 seats when the footrest is in a horizontal position. The commenter further states, that the compliance time should be increased to 18 months on the executive class Model 950 seats, since the footrest has a physical stop that limits the travel of the linkage and thus the footrest to approximately 45 degrees.

The FAA disagrees. The FAA has examined the various seats equipped with footrest and finds that the potential for injury to the hands exists on all of these seat models. The FAA considers the modification to be repetitive and not complex, therefore, does not need to be done during scheduled maintenance. An increase of the compliance time to 18 months is not needed.

There are approximately 5800 seats equipped with footrest assembly of the affected design in the worldwide fleet. The FAA estimates that 5000 seats

equipped with footrest assembly installed on aircraft of U.S. registry would be affected by this AD, that it would take approximately ¾ work hours per seat to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $30 per seat. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $225,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive: 4

96–12–09 PTC Seating Products Division, B/E Aerospace:Amendment 39–9651. Docket No. 95–ANE–25.

Applicability: PTC Seating Products Division, B/E Aerospace (PTC) Model 950 series passenger seat equipped with footrest assembly.

Note: This AD applies to each seat identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For seats equipped with footrest assembly that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any seat from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously. To prevent injury to hands during operation of the PTC Model 950 series passenger seats equipped with footrest assembly, accomplish the following:

(a) Within nine calendar months after the effective date of this AD,

(1) Remove seat footrest assembly arms, P/N 98440–1 or –2, in accordance with the Accomplishment Instructions of PTC Aerospace Service Bulletin (SB) 25–1192, Revision A, dated March 16, 1992.

(2) Install conversion kit, P/N 122966–1, in accordance with Section 2, Accomplishment Instructions of PTC Seating Products Division, B/E Aerospace SB 25–1330, dated July 27, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston Aircraft Certification Office.

(c) The removal of seat footrest assembly arms and replacement of the conversion kit shall be done in accordance with PTC Aerospace Service Bulletin (SB) 25–1192, Revision A, dated March 16, 1992, pages 1–5, and PTC Seating Products Division, B/E Aerospace SB 25–1330, dated July 27, 1994, pages 1–12. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from B/E Aerospace, PTC Seating Products Division, 607 Bantam Road, Litchfield, CT 06759. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capital Street, NW., suite 700, Washington, DC.

(d) This amendment becomes effective July 29, 1996.

Issued in Burlington, Massachusetts on June 4, 1996.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 96–15555 Filed 6–21–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–233–AD; Amendment 39–9680; AD 74–08–09 R2]

RIN 2120–AA64

Airworthiness Directives; Transport Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to all transport category airplanes, that currently requires installation of placards prohibiting smoking in the lavatory and disposal of cigarettes in the lavatory waste receptacles; establishment of a procedure to announce to airplane occupants that smoking is prohibited in the lavatories; installation of ashtrays at certain locations; and repetitive inspections to ensure that lavatory waste receptacle doors operate correctly. That AD was prompted by fires occurring in lavatories, which were caused by, among other things, the improper disposal of smoking materials in lavatory waste receptacles. The actions specified by that AD are intended to prevent such fires. This amendment revises the existing AD to allow dispatch relief in the event a lavatory door ashtray is missing.

EFFECTIVE DATE: July 29, 1996.

ADDRESSES: Information pertaining to this rulemaking may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman Martenson, Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2113; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by revising AD 74–08–09 R1, amendment 39–9214 (60 FR 21429, May 2, 1995), which is applicable to all transport category airplanes, was published in the Federal Register on

January 19, 1996 (61 FR 1306). AD 74–08–09 R1 currently requires:

1. installation of placards prohibiting smoking in the lavatory and disposal of cigarettes in the lavatory waste receptacles;

2. establishment of a procedure to announce to airplane occupants that smoking is prohibited in the lavatories;

3. installation of ashtrays at certain locations; and

4. repetitive inspections to ensure that lavatory waste receptacle doors operate correctly.

That AD also provides for an alternative action regarding the requirement to install specific placards at certain locations.

The proposal specified the FAA's intent to revise AD 74–08–09 R1 by adding a provision that would allow for dispatch relief in the event a lavatory door ashtray is missing from the airplane.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Five commenters support the proposal.

Request To Revise Terminology of Dispatch Relief Provision

One commenter requests that proposed paragraph (d) be revised to change the terminology used in the provision for dispatch relief. The commenter requests that the provision specify the time for continued dispatch in terms of ''flight days,'' rather than merely ''days.'' The commenter states that the definition of ''flight day'' is recognized by the FAA in documents such as the Master Minimum Equipment List (MMEL), and using this terminology in the proposed rule would further clarify the requirements.

The FAA does not concur. Use of the term ''flight day'' rather than ''(calendar) day'' for compliance terms in this AD could delay the re-installation of the ashtray on the airplane for an unduly long period of time. Moreover, the MMEL for most affected transport airplanes specifies ''calendar days'' in its description of the ''Maximum Times Between Deferral and Repair;'' therefore, this term used as a compliance time is appropriate and should be familiar to affected operators.

The FAA's intent is that, if the ashtray(s) is removed, the airplane should be allowed to continue to operate for the minimum amount of time that it would take, under normally scheduled operations, to reach a main base where the ashtray can be replaced. The FAA has determined that the terms of the dispatch relief provisions, as proposed, will allow such normal operation to occur (without schedule interruptions) and the ashtray to be replaced in a timely manner.

Request To Revise Number of Days of Dispatch Relief

Several commenters request that the dispatch relief provision of proposed paragraph (d) be revised to account for the various types and configurations of transport aircraft that are affected, and to ensure that no airplane is grounded because of the absence of ''a component that does not affect the airworthiness of the airplane.''

The commenters point out that, as proposed, the rule would allow operation of a single-lavatory airplane for three days with its only lavatory door ashtray missing. This group of airplanes could include certain Boeing Model 737 airplanes, McDonnell Douglas Model DC–9 airplanes, Fokker Model 100 airplanes, and regional airplanes that seat 100 or fewer passengers. However, other similarly-configured models (i.e., certain Model 737's and Model DC–9's) that have 100 or fewer seats, but are equipped with two lavatories, could not be dispatched if both of the airplane's two lavatory door ashtrays were missing.

The commenters request that the proposal be revised to allow single- or dual-lavatory airplanes to continue to operate for three days if one or both ashtrays are missing. The commenters assert that operating a dual-lavatory, 100-seat airplane without ashtrays for three days is no less safe than operating a single-lavatory 100-seat airplane that has its only ashtray missing for three days. The commenters maintain that the proposed rule should not discriminate between these two configurations.

Further, the commenters note that airplanes equipped with multiple lavatories (and, thus, multiple lavatory door ashtrays) could not be dispatched if more than one lavatory door ashtray is missing; the commenters contend that this feature of the proposed rule potentially could ground wide-body airplanes such as McDonnell Douglas Model DC–10's, Lockheed Model L–1011's, and Boeing Model 747's, and thereby interrupt flight schedules. These commenters also request that the proposal be revised to provide airplanes with three or more lavatories additional dispatch relief in the event that more than one lavatory door ashtray is missing. For these airplanes, they suggest the following revised wording:

''1. At multiple or cluster lavatories co-located (two or more adjacent lavatories), the airplane may be operated for a period of 10 days if the lavatory door ashtrays are missing, provided that the remaining ashtray(s) can be seen readily from the cabin side of the lavatory door(s) with the missing door ashtray.

2. At single lavatory locations, the airplane may be operated for a period of 3 days if one lavatory door ashtray is missing, provided other lavatory door ashtrays are installed [and can be seen readily from the cabin side of the lavatory door(s) with the missing door ashtray].''

The FAA does not concur with the commenters' requests, and does not consider that additional dispatch relief is appropriate.

First, contrary to the commenters' description of the lavatory door ashtray as a component that does not affect the airworthiness of the airplane, the FAA has determined that the ashtrays serve an important safety function and, therefore, must be considered required equipment. This AD was issued as a result of numerous fires that occurred in the lavatory paper and linen receptacles on transport category airplanes, which were caused by smoking materials deposited by passengers or crew. Such fires can be a significant threat to the safety of all persons on the airplane because of the emission of toxic smoke and the possibility of the fire progressing to critical components. The FAA has determined that the requirements of this AD are necessary in order to ensure adequate, comprehensive fire protection aboard transport category airplanes. The requirement for an ashtray on or near the lavatory door ensures that there is a safe, convenient, and obvious place to dispose of smoking material (especially, in cases where the current regulations imposing a ''no smoking policy'' aboard the airplane are not adhered to either by passengers, crew, or maintenance personnel).

Second, in developing the time intervals for allowing continued operation of an airplane with fewer than the required number of lavatory door ashtrays, the FAA considered not only the safety implications (associated with operating an airplane without a component that affects the airworthiness of the airplane), but experiences obtained from working both with operators and with the MMEL system. The FAA's reasoning behind the dispatch relief specified in this rule is based on several factors:

1. With respect to airplanes equipped with a single lavatory, which are

normally smaller transports that operate on shorter routes, the FAA considers that those airplanes can operate safely in today's environment, without a lavatory door ashtray, for the time that it takes to get the airplane back to a maintenance base for reinstallation of the ashtray. For those airplanes, the FAA generally defines that amount of time as three days.

2. With respect to airplanes equipped with two or more lavatories, which are normally larger transports that operate on longer routes, the FAA considered worst-case situations, for example, where an airplane may be scheduled to do a double or triple turn-around from two international points. In such a situation, it could take as long as 10 days to get the airplane back to its main base where a missing ashtray could be re-installed.

3. Additionally, the 10-day period of dispatch relief for multiple-lavatory airplanes with one ashtray missing is the same interval as the standard definition ''Category C'' item in the MMEL for repair intervals (relative to inoperative systems or components) for almost all transport category airplanes; Category C is the ''category of choice'' for approximately 85% to 90% of all items in the MMEL. Therefore, the FAA considers that this time period could be easily managed by air carrier maintenance programs and should not pose a problem for operators.

Third, regarding airplanes equipped with multiple lavatories, the FAA considers that affected operators should examine why more than one lavatory door ashtray could be missing from these airplanes. It is understandable that occasionally, through carelessness, damage, or deliberate pilfering, an ashtray could be removed from an airplane; however, this should be a highly unusual event. Having two (or more) lavatory door ashtrays missing from a single airplane should be extremely remote. If this is occurring regularly, operators should examine their current policy and practices regarding ashtray maintenance.

The FAA finds no reasonable justification for allowing dispatch relief for periods of time longer than those as proposed, or for allowing more than one lavatory door ashtray to be missing on an airplane that is equipped with more than one lavatory. The FAA finds that the dispatch relief provided by this final rule not only will ensure safety, but will impose no undue economic burden on any operator.

Request To Allow Ashtrays To Be Relocated

These same commenters request that the proposal be revised to give operators of larger airplanes the flexibility to move remaining ashtrays to different parts of the cabin if one ashtray is missing.

In response to this request, the FAA points out that paragraph (c) of the AD, as well as part 25 of the Federal Aviation Regulations (FAR) (25 CFR 25), already permit a configuration where one ashtray may serve more than one lavatory door if the ashtray can be seen readily from the cabin side of the lavatory door served. Further, nothing prohibits an operator from moving or relocating ashtrays within the cabin to meet this requirement. Therefore, no revision to the AD is necessary with regard to this request.

Request To Include a Provision for Alternative Methods of Compliance

One commenter requests that the proposal be revised to include a provision that would allow operators to request the use of alternative methods of compliance (AMOC) with the AD. The commenter notes that most other AD's include such a provision, and that the FAA's own policy guidance stipulates that AD's should include an AMOC provision. The commenter requests that the proposal be revised to meet that policy.

The FAA does not concur that an AMOC provision is appropriate for this particular AD. As the commenter correctly points out, the FAA's normal policy (reference FAA Document FAA-AIR-M–8040.1, ''Airworthiness Directives'') is that an AMOC provision ''should be provided for in each AD,'' and the majority of AD's issued do contain such a provision. For typical AD's, the FAA is not aware, at the time of AD issuance, of the range of alternative methods that may exist for complying with the AD; it is for this reason that including an AMOC provision in those AD's is appropriate.

However, this AD is an exception: It has existed more or less in its current form for over 20 years and, during that time, the FAA has not been presented with a single acceptable alternative method of compliance with it. All suggestions and requests that have been submitted to the FAA (mainly in the form of requests for exemption from the AD requirements) have been found to be unacceptable in that they would provide neither an equivalent nor an acceptable level of safety to that provided by the requirements of the AD itself.

In light of this, the FAA has determined that including an AMOC provision in this AD at this time would not be productive.

The FAA points out that paragraph (f) of the AD does provide operators a means for some alternative actions. It permits an adjustment of the time interval for the required repetitive inspections of the waste receptacle enclosure doors and disposal doors, if data are presented to the FAA to justify such an adjustment. [However, the FAA points out that the majority of U.S. operators of transport category airplanes are conducting these inspections at the specified 1,000-hour interval (some are conducting the inspections more frequently), and many have found discrepancies during the 1,000-hour inspections. In light of this, the FAA continues to conclude that the currently required inspection interval is appropriate, since it ensures that any discrepancy will be identified and corrected in a timely manner.]

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

Since this action only provides for an alternative method of complying with an existing rule, it does not add any new additional economic burden on affected operators. In fact, the dispatch relief provided by this AD will allow operators to continue to operate airplanes without the required number of ashtrays for a longer period of time than was previously permitted. This will result in a reduction in costs to affected operators, since it will eliminate potential interruptions in service or special scheduling at maintenance bases that otherwise would be necessary in order to reinstall missing ashtrays.

The current costs associated with this AD are reiterated below for the convenience of affected operators.

The costs associated with the currently required placard installations entail approximately 1 work hour per airplane, at an average labor rate of $60 per work hour. The cost of required parts is negligible. Based on these figures, the total cost impact of the installation requirements of this AD on U.S. operators is estimated to be $60 per airplane.

The costs associated with the currently required inspections entail approximately 1.5 work hours per airplane per inspection, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of

the inspection requirements of this AD on U.S. operators is estimated to be $90 per airplane per inspection.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9214 (60 FR 21429, May 2, 1995), and by adding a new airworthiness directive (AD), amendment 39–9680, to read as follows:

74–08–09 R2 Transport Category Aircraft: Amendment 39–9680. Docket 95–NM–233–AD. Revises AD 74–08–09 R1, Amendment 39–9214.

Applicability: All transport category airplanes, certificated in any category, that have one or more lavatories equipped with paper or linen waste receptacles.

Note 1: The following is a partial list of aircraft, some or all models of which are type certificated in the transport category and have lavatories equipped with paper or linen waste receptacles:

Aerospatiale Models ATR42 and ATR72 series airplanes;
Airbus Models A300, A310, A300–600, A320, A330, and A340 series airplanes;
Boeing Models 707, 720, 727, 737, 747, 757, and 767 series airplanes;
Boeing Model B–377 airplanes;
British Aircraft Models BAC 1–11 series, BAe-146 series, and ATP airplanes;
CASA Model C–212 series airplanes;
Convair Models CV–580, 600, 640, 880, and 990 series airplanes;
Convair Models 240, 340, and 440 series airplanes;
Curtiss-Wright Model CW 46;
de Havilland Models DHC–7 and DHC–8 series airplanes;
Fairchild Models F–27 and C–82 series airplanes;
Fairchild-Hiller Model FH–227 series airplanes;
Fokker Models F27 and F28 series airplanes;
Grumman Model G–159 series airplanes;
Gulfstream Model 1159 series airplanes;
Hawker Siddeley Model HS–748;
Jetstream Model 4101 airplanes;
Lockheed Models L–1011, L–188, L–1049, and 382 series airplanes;
Martin Model M–404 airplanes;
McDonnell Douglas Models DC–3, -4, -6, -7, -8, -9, and -10 series airplanes;
Model MD–88 airplanes; and Model MD–11 series airplanes;
Nihon Model YS–11;
Saab Models SF340A and SAAB 340B series airplanes;
Short Brothers and Harlin Model SC–7 series airplanes;
Short Brothers Models SD3–30 and SD3–60 series airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible fires that could result from smoking materials being dropped into lavatory paper or linen waste receptacles, accomplish the following:

(a) Within 60 days after August 6, 1974 (the effective date of AD 74–08–09, amendment 39–1917), or before the accumulation of any time in service on a new production aircraft after delivery, whichever occurs later, except that new production aircraft may be flown in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to a base where compliance may be accomplished, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Install a placard either on each side of each lavatory door over the door knob, or on each side of each lavatory door, or adjacent to each side of each lavatory door. The placards must either contain the legible words, ''No Smoking in Lavatory'' or ''No Smoking;'' or contain ''No Smoking'' symbology in lieu of words; or contain both wording and symbology; to indicate that smoking is prohibited in the lavatory. The placards must be of sufficient size and contrast and be located so as to be conspicuous to lavatory users. And

(2) Install a placard on or near each lavatory paper or linen waste disposal receptacle door, containing the legible words or symbology indicating ''No Cigarette Disposal.''

(b) Within 30 days after August 6, 1974, establish a procedure that requires that no later than a time immediately after the ''No Smoking'' sign is extinguished following takeoff, an announcement be made by a crewmember to inform all aircraft occupants that smoking is prohibited in the aircraft lavatories; except that, if the aircraft is not equipped with a ''No Smoking'' sign, the required procedure must be provide that the announcement be made prior to each takeoff.

(c) Except as provided by paragraph (d) of this AD: Within 180 days after August 6, 1974, or before the accumulation of any time in service on a new production aircraft, whichever occurs later, except that new production aircraft may be flown in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to a base where compliance may be accomplished, install a self-contained, removable ashtray on or near the entry side of each lavatory door. One ashtray may serve more than one lavatory door if the ashtray can be seen readily from the cabin side of each lavatory door served.

(d) The airplane may be operated for a period of 10 days with a lavatory door ashtray missing, provided that no more than one such ashtray is missing. For airplanes on which only one lavatory door ashtray is installed, the airplane may be operated for a period of 3 days if the lavatory door ashtray is missing.

Note 2: This AD permits a lavatory door ashtray to be missing, although the FAA-approved Master Minimum Equipment List (MMEL) may not allow such provision. In any case, the provisions of this AD prevail.

(e) Within 30 days after August 6, 1974, and thereafter at intervals not to exceed 1,000 hours time-in-service from the last inspections, accomplish the following:

(1) Inspect all lavatory paper and linen waste receptacle enclosure access doors and disposal doors for proper operation, fit, sealing, and latching for the containment of possible trash fires.

(2) Correct all defects found during the inspections required by paragraph (e)(1) of this AD.

(f) Upon the request of an operator, the FAA Principal Maintenance Inspector may adjust the 1,000-hour repetitive inspection interval specified in paragraph (e) of this AD to permit compliance at an established inspection period of the operator if the request contains data to justify the requested change in the inspection interval.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) This amendment becomes effective on July 29, 1996.

Issued in Renton, Washington, on June 17, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–15957 Filed 6–21–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 96–ASO–3]

Establishment of Class E Airspace; Chiefland, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Class E airspace at Chiefland, FL. A White Farms Airport at Chiefland, FL, has a VOR/DME–A Standard Instrument Approach Procedure (SIAP). Controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of this SIAP.

EFFECTIVE DATE: 0901 UTC, August 15, 1996.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

On April 16, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing Class E airspace at Chiefland, FL, (61 FR 16621). This action will provide adequate Class E airspace for IFR operations at White Farms Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Chiefland, FL, to accommodate a VOR/DME–A SIAP and for IFR operations at White Farms Airport. The operating status of the airport will be changed from VFR to include IFR operations concurrent with publication of this SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASO FL E5 Chiefland, FL [New]

Chiefland White Farms Airport, FL
(Lat. 29°30′45″N, long. 82°52′30″W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of White Farms Airport, excluding that airspace within the Cross City, FL, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on June 5, 1996.

Benny L. McGlamery,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 96–15984 Filed 6–21–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ASO–9]

Establishment of Class E Airspace; Dawson, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Class E airspace at Dawson, GA. A VOR/DME RWY 31 Standard Instrument Approach Procedure (SIAP) has been developed for Dawson Municipal Airport. Controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of this SIAP.

EFFECTIVE DATE: 0901 UTC, August 15, 1996.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

On April 8, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing Class E airspace at Dawson, GA, (61 FR 15434). This action will provide adequate Class E airspace for IFR operations at Dawson Municipal Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Dawson, GA, to accommodate a VOR/DME RWY 31 SIAP and for IFR operations at Dawson Municipal Airport. The operating status of the airport will be changed from VRF to include IFR operations concurrent with publication of this SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASO GA E5 Dawson, GA [New]

Dawson Municipal Airport, GA
(Lat. 31°44'46''N, long. 84°25'30''W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Dawson Municipal Airport.

* * * * *

Issued in College Park, Georgia, on June 5, 1996.

Benny L. McGlamery,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 96–15983 Filed 6–21–96; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

16 CFR Chapter I

Determination Concerning Telemarketing Rules

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of determination that existing Commodity Exchange Act provisions, Commission Regulations, and National Futures Association (''NFA'') rules provide protection from abusive and deceptive telemarketing practices ''substantially similar'' to that provided by the Federal Trade Commission's recently promulgated telemarketing rule.

SUMMARY: Pursuant to its obligations under section 3(e) of the Telemarketing and Consumer Fraud and Abuse Prevention Act (''Telemarketing Act''),[1] 15 U.S.C. 6102(e), and corresponding section 6(f) of the Commodity Exchange Act (''CEA''),[2] 7 U.S.C. 9b, the Commodity Futures Trading Commission (''Commission'' or ''CFTC'') hereby provides notice of its determination that existing CEA provisions, Commission Regulations under the CEA,[3] and CFTC-approved NFA rules,[4] interpretations, and other requirements in the area of telemarketing, provide protection from deceptive and abusive telemarketing practices ''substantially similar'' to that provided by the Federal Trade Commission's (''FTC's'') recently promulgated Telemarketing Sales Rule, 16 CFR Part 310 (Prohibition of Deceptive and Abusive Telemarketing Acts).[5] Accordingly, the CFTC will not promulgate additional rules under the Telemarketing Act at this time. Background information and a discussion of the basis for the CFTC's determination that existing provisions of its regulations and enabling statute, together with NFA telemarketing requirements, provide protection against deceptive and abusive telemarketing acts and practices substantially similar to that provided by the FTC's rule are set forth below.

EFFECTIVE DATE: June 24, 1996.

FOR FURTHER INFORMATION CONTACT: Nancy L. Walsh, Attorney, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581. Telephone: (202) 418–5330.

SUPPLEMENTARY INFORMATION:

I. The Telemarketing Act

The Telemarketing Act, signed into law on August 16, 1994, ''to strengthen the authority of the Federal Trade Commission to protect consumers in connection with sales made with a telephone, and for other purposes,''[6] required that the FTC adopt rules prohibiting deceptive and abusive telemarketing practices. As discussed below, the Telemarketing Act also added a new Section 6(f) to the CEA, 7 U.S.C. 9b, which requires, subject to certain exceptions, that the CFTC ''promulgate, or require each registered futures association to promulgate, rules substantially similar'' to the FTC's telemarketing rules within six months of the effective date of the FTC rules.[7]

A. Congressional Findings

In imposing rulemaking and other obligations on the FTC, the CFTC, and the SEC, the Telemarketing Act lists the following Congressional findings: (1) That telemarketing differs from other sales activities given sellers' mobility and ability to make sales across state lines without direct contact with consumers; (2) that interstate telemarketing fraud is a problem of such magnitude that FTC resources are

[1] 15 U.S.C. 6101–08.

[2] Citations to the CEA in this notice refer to the Commodity Exchange Act, codified at 7 U.S.C. 1 *et seq.* (1994).

[3] Citations to ''Commission Regulations'' or ''CFTC Regulations'' refer to the CFTC's regulations, codified at 17 CFR 1.1. *et seq.*

[4] Section 17 of the CEA, 7 U.S.C. 21, requires the CFTC to review and approve the rules of registered futures associations, which have explicit self-regulatory obligations under the CEA and Commission Regulations. To date, NFA, which began operations in 1982, is the only registered futures association.

[5] 60 FR 43842 (August 23, 1995).

[6] H.R. Rep. No. 20, 103d Cong., 1st Sess. at 1 (1993).

[7] *See* Section 6(f) of the CEA, 7 U.S.C. 9b. The Telemarketing Act similarly requires the Securities and Exchange Commission (''SEC'') to promulgate telemarketing rules within the same time frame unless it determines: (1) that federal securities laws or SEC rules provide substantially similar protection; or (2) that SEC telemarketing rules would not be necessary or appropriate in the public interest, or would be inconsistent with the maintenance of fair and orderly markets. *See* Section 3(d) of the Telemarketing Act, 15 U.S.C. 6102(d).

insufficient to protect consumers; (3) that telemarketing fraud results in approximately $40 billion/year in losses; and (4) that consumers are victims of other forms of telemarketing deception and abuse as well.[8] Consequently, Congress found that it should enact legislation to offer customers necessary protection from telemarketing deception and abuse.[9]

B. Rulemaking Obligations

1. Imposed on the FTC[10]

The Telemarketing Act required the FTC, within 365 days of the statute's enactment, to ''prescribe rules prohibiting deceptive telemarketing acts or practices and other abusive telemarketing acts or practices.'' [11] Those rules, the statute provides, must define deceptive telemarketing acts or practices and must include: a prohibition of any pattern of unsolicited telephone calls; restrictions on calling times for unsolicited calls; and a requirement that telemarketers ''promptly and clearly'' disclose the purpose of calls and make other appropriate disclosures. Under the Telemarketing Act, telemarketing rules promulgated by the FTC shall not apply to any person ''registered or exempt from registration'' under the CEA as a futures commission merchant (''FCM''), introducing broker (''IB''), commodity trading advisor (''CTA''), commodity pool operator (''CPO''), leverage transaction merchant, floor broker, or floor trader, or any person associated with such firms, entities or persons.[12]

2. Imposed on the CFTC

As noted above, the Telemarketing Act requires the CFTC to promulgate, or require each registered futures association to promulgate, rules ''substantially similar'' to those of the FTC, within six months of the effective date of the FTC's rules, absent certain exceptions discussed below.[13] Any CFTC telemarketing rules promulgated would apply to any person registered or exempt from registration under the CEA in connection with such person's business as an FCM, IB, CTA, CPO, leverage transaction merchant, floor broker, or floor trader, and to any person associated with such firms, entities, or persons.[14]

The CFTC, however, is not required to promulgate rules if it determines either: (1) That CFTC rules provide ''substantially similar'' protection from deceptive and abusive telemarketing practices by certain persons registered or exempt from registration under the CEA as the FTC's telemarketing rule;[15] or (2) that CFTC telemarketing rules are not necessary or appropriate in the public interest, or for the protection of customers in the futures and options markets, or would be inconsistent with ''the maintenance of fair and orderly markets.'' If the CFTC determines that one of these exceptions applies, it must publish the reasons for its determination in the Federal Register.

II. The FTC's Final Rule

The FTC's Telemarketing Sales Rule, 16 CFR Part 310, became effective December 31, 1995.[16] Most of the substantive provisions of the rule appear in sections 310.3 and 310.4. Section 310.3 makes it a deceptive telemarketing act or practice and a violation of the FTC's rule for telemarketers or sellers to engage in certain prohibited deceptive acts or practices, including, in particular, failing to disclose or misrepresenting specified material information. Section 310.4 identifies certain ''abusive'' conduct (for example, engaging in threats or using profane language), establishes ''pattern of call'' and calling time restrictions, and requires sellers and telemarketers to make specific oral disclosures (including the identity of the seller, the purpose of the call, the nature of the goods or services being sold, and, if a prize promotion is offered, that no purchase or payment is necessary to participate in the promotion).

III. CFTC's Existing Protection Against Deceptive and Abusive Telemarketing Acts and Practices Is ''Substantially Similar'' to Protection Under the FTC Rule

A. Generally

As stated above, the CFTC has determined that existing statutory provisions, regulations, and NFA rules governing telemarketing practices of registered commodity professionals provide protection from deceptive and abusive telemarketing that is ''substantially similar'' to the protection provided by the FTC's Telemarketing Sales Rule. To reach that determination, the CFTC carefully analyzed and compared the FTC's Telemarketing Sales Rule and analogous provisions of the CEA, Commission Regulations, and NFA rules. The Commission also considered information from NFA on the scope and application of its telemarketing and sales practice rules. Given the substantially similar protection provided by existing CEA provisions, Commission Regulations, and NFA rules, and the fact that the FTC's rule addresses some areas not within the Commission's jurisdiction, the Commission has determined, pursuant to Section 6(f)(2) of the CEA, 7 U.S.C. 9b(2), not to promulgate additional telemarketing rules at this time.

Since it began operations in 1975, the CFTC has attacked fraudulent telemarketing schemes within its jurisdiction consistently and vigorously, and with considerable success. In doing so, the CFTC brings federal court injunctive actions and administrative actions; it assists the United States' Attorneys in criminal prosecutions; and it files joint actions with states.

While, as reflected by the chart below, certain CEA provisions, Commission Regulations, and NFA rules address and prohibit the same acts and practices targeted by the FTC's Telemarketing Sales Rule, those provisions are part of a comprehensive regulatory scheme developed specifically for the futures and commodity options markets. The FTC's Telemarketing Rule, on the other hand, defines the terms, ''telemarketer'' and ''goods or services'' broadly without

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[8] *See* Section 2 of the Telemarketing Act, 15 U.S.C. 6101.

[9] *See* Section 2(5) of the Telemarketing Act, 15 U.S.C. 6101(5).

[10] *See* Sections 3(a)–(c) of the Telemarketing Act, 15 U.S.C. 6102(a)–(c).

[11] The statute was enacted on August 16, 1994, and, as noted above, *see supra* n. 5, the FTC issued its final Telemarketing Sales Rule on August 23, 1995.

[12] *See* Section 3(e)(1) of Telemarketing Act, 15 U.S.C. 6102(e)(1), and section 6(f)(1) of Commodity Exchange Act, 7 U.S.C. 9b(1). *See also* 60 FR at 43843, n. 18 (FTC statement of basis and purpose for final FTC telemarketing rule confirming that such persons—as well as certain securities professionals regulated by the SEC—are excluded from coverage of the FTC's rule).

[13] The FTC's Telemarketing Sales Rule became effective December 31, 1995. 60 FR 43842. Accordingly, the CFTC, by June 30, 1996, must promulgate rules or publish a notice of its determination that one of the listed exceptions applies.

[14] Section 6(f)(1) of the CEA, 7 U.S.C. 9b(1). These persons (as well as certain securities professionals) are specifically excluded from coverage by the FTC's telemarketing rule. *See supra* n. 12.

[15] The CFTC has properly considered NFA rules and other requirements, as well as CFTC Regulations and provisions of the CEA, in analyzing whether this exception applies. Because the Telemarketing Act requires either the CFTC or ''a registered futures association'' to promulgate rules, *see* section 6(f)(1) of the CEA, 7 U.S.C. 9b(1), consideration of CFTC-approved NFA rules is necessary to evaluate whether existing protection is ''substantially similar'' to that provided by the FTC's rule. NFA, as noted above, is the only registered futures association. *See supra* n. 4. In addition, Commission Regulation 170.15 and NFA By-Law 1101 essentially work to require that all commodity professionals who deal with customers be members of NFA, thus assuring that NFA rules apply to the listed categories of professionals, except for floor traders and floor brokers who are exchange members and generally not engaged in telemarketing.

[16] 60 FR 43842 (August 23, 1995).

regard to the subject matter of particular solicitations.[17] In light of the agencies' different regulatory missions, the FTC's Telemarketing Sales Rule addresses the telemarketing of certain goods and services that are not within the CFTC's jurisdiction or expertise, such as prize promotions and awards. Accordingly, not every provision of the FTC's Telemarketing Sales Rule has a precisely equivalent analogue in the CEA, Commission Regulations, or NFA Rules.

B. Comparison Chart: FTC Telemarketing Sales Rule and Existing CEA Provisions, Commission Regulations, and NFA Rules

The following chart provides a side-by-side description and comparison of substantive provisions of the FTC's Telemarketing Sales Rule and certain analogous provisions of the CEA, Commission Regulations, and NFA rules.[18] Given the CFTC's and the FTC's different regulatory missions and the fact that the FTC's rule addresses certain subjects and products outside the CFTC's jurisdiction, not every subject addressed by the FTC's Telemarketing Sales Rule is governed or addressed by a corresponding provision of the CEA, Commission Regulations, or NFA Rules. The chart is intended to provide an overview and concise summary of the FTC's rule and relevant provisions of the CEA, Commission Regulations, and NFA Rules. The chart is not intended to be an exhaustive list of every CEA provision, Commission rule, and NFA rule or requirement relating to each provision of the FTC's rule.

SECTION 310.3: DECEPTIVE TELEMARKETING ACTS OR PRACTICES

(a): Prohibited Deceptive Acts/ Practices. It is a deceptive act or practice to:	Antifraud provisions of the CEA and Commission Regulations require disclosure of material information.
(1) Fail to disclose the following ''material information'' in clear and conspicuous manner before customer pays: total costs; all material limits, restrictions, conditions to purchasing, receiving or using goods or services; any refund, cancellation, exchange policy; (for prize promotion) odds of receiving prize; and all material costs/conditions to redeeming prize;.	*Reg. 1.55* requires FCMs and IBs, before opening accounts, to furnish customers with standard written risk disclosure statement disclosing the substantial risk of loss from trading commodity futures contracts and secure signed acknowledgement. *See Reg. 30.6* (disclosure requirements for FCMs and IBs opening foreign futures or option account); *Part 4 of Regs.* (CPOs and CTAs, before soliciting, accepting, or receiving funds, must furnish disclosure document and risk disclosure statement, disclosing, among other things, break-even point, the pool or trading advisor's business background, principal risk factors, fees and expenses, and performance information); *Reg. 4.21 et seq.* (for CPOs); *Reg. 4.31 et seq.* (for CTAs). *Reg. 32.5* requires options disclosure statement, including description of transaction, costs, effect of foreign currency fluctuations, and disclosure of volatile nature of commodities markets, risk of loss, and other information. *Reg. 31.11* (leverage transaction merchants must furnish disclosure document and secure signed acknowledgement).
(2) Misrepresent, directly or by implication, listed material information.	*CEA, 4b(a)(i),* 7 U.S.C. 6b(a)(i), makes it unlawful, in connection with certain commodity futures transactions, to cheat or defraud or attempt to cheat or defraud another person. *CEA, 4o,* 7 U.S.C. 6*o,* among other things, makes it unlawful for CPOs and CTAs to employ a device, scheme, or artifice to defraud or to engage in any transaction, practice or course of business which operates as a fraud or deceit. *Regs. 32.9 and 33.10* make it unlawful, among other things, to cheat or defraud or attempt to cheat or defraud any other person, make or cause to be made any false report or statement, or deceive or attempt to deceive any other person, in connection with commodity option transactions. *NFA Rule 2–2(a)* provides that no member or associate shall cheat, defraud, deceive or attempt to cheat, defraud, or deceive any commodity futures customer. *See also CEA, 4b(a)(ii),* 7 U.S.C. 6b(a)(ii) (unlawful willfully to make or cause to be made any false report or statement); *CEA, 4b(a)(iii),* 7 U.S.C. 6b(a)(iii) (unlawful willfully to deceive or attempt to deceive another person).
(3) Fail to obtain or submit verifiable authorization before submitting check, draft or other negotiable paper drawn on person's account for payment; or	Signed risk disclosure requirements (discussed above). *Reg. 166.2* (prohibits FCMs and IBs from trading for customer account without prior specific authorization or written authorization allowing trading without separate authorization for each individual transaction). Segregation requirements for handling customer funds also provide protection. *CEA, 4d(2),* 7 U.S.C. 6d(2), *Regs. 1.20–1.30, 1.32,* and *1.36.*
(4) Make false/misleading statement to induce payment.	*Compare* to discussion of Section 310.3 above.
(b): Assisting/Facilitating deceptive act/practice to provide substantial assistance or support to seller or telemarketer when person knows or avoids knowing seller or telemarketer is engaged in act/practice that violates Rule.	*CEA, 13(a),* 7 U.S.C. 13c(a) (Aiding and Abetting): person who commits, or willfully aids, abets, counsels, commands, induces or procures commission of a violation of CEA, may be held responsible as principal. *CEA, 13(b),* 7 U.S.C. 13c(b) (Controlling Person): person who directly or indirectly controls any person who has violated CEA or Commission rules may be liable for violation to the same extent as controlled person. *CEA, 2(a)(1)(A)(iii),* 7 U.S.C. 4 (Vicarious Liability): corporations, partnerships, associations, and individuals liable for acts and omissions of employees and agents. *Reg. 166.3* (Supervision): registrants must supervise diligently their employees and agents in all aspects of their futures activities.
(c): Credit Card Laundering	To the extent credit card laundering is part of a scheme to violate the CEA or Commission Regulations, *CEA, 13,* 7 U.S.C. 13c (Aiding and Abetting) could be used to address conduct.

SECTION 310.4: ABUSIVE TELEMARKETING ACTS OR PRACTICES

(a): Abusive Conduct Generally—It is abusive conduct to:	

[17] Section 310.2(t) of the FTC's Telemarketing Sales Rule, for example, defines ''telemarketer'' as ''any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer.'' The FTC similarly defines the phrase, ''goods or services'' broadly to cover ''any tangible and intangible goods or services including, but not limited to, leases, licenses, or memberships,'' as well as prizes and awards. *See* Statement of Basis and Purpose, 60 FR at 43844.

[18] Provisions of the FTC's rule are listed and described on the left, and analogous provisions of the CEA, Commission Regulations or NFA rules are listed and described on the right.

(1) Engage in threats, intimidation or use profane or obscene language;.	*NFA Compliance Rule 2–29(a)(2)* prohibits high pressure sales practices, including threatening or intimidating solicitations and the use of profane or obscene language. *See* NFA's recent *Notice to Members*[19] (confirming that NFA Compliance Rule 2–29(a)(2) prohibits threats and intimidation, calling at irregular hours, and the use of profane or obscene language).[20] *NFA Compliance Rule 2–9* requires each NFA member to supervise diligently its employees and agents in all aspects of their futures activities. *Interpretive Notice to NFA Compliance Rule 2–9* imposes enhanced telemarketing supervisory requirements, including tape-recording certain sales solicitations, on a member firm if a certain threshold number or percentage of its APs formerly were employed by firms disciplined by NFA or the CFTC for sales practice fraud.
(2) Request/receive payment to remove derogatory information from credit history unless listed conditions met;.	*See* Comparison with 310.3(c).
(3) Request/receive payment for recovering money or any item of value paid in previous telephone transaction; or.	*See* Comparison with 310.3(c).
(4) Request/receive payment before securing loan and indicating high chance of getting loan.	*See* Comparison with 310.3(c).
(b): Pattern of Calls Abusive act/practice to: (i) make calls repeatedly or continuously with intent to annoy, abuse or harass; or (ii) initiate call when person has stated that he/she does not want to receive call.	*See* Comparison with 310.4(a) *(NFA Compliance Rule 2–29(a)(2), NFA Notice to Members,* and *NFA Compliance Rule 2–9).* NFA considers pattern of calls in initiating complaints under *NFA Compliance Rule 2–29(a)(2).*[21]
(c): Calling Time Restrictions Calls must be between 8:00 a.m. and 9:00 p.m.	*See* Comparison with 310.4(a) *(NFA Compliance Rule 2–29(a)(2), NFA Notice to Members).*[22]
(d) Required Oral Disclosures Abusive telemarketing act NOT to disclose: seller's identity; call's purpose; nature of goods/services; and that no purchase necessary to win prize or participate in promotion.	*See* Comparison with 310.4(a) *(NFA Compliance Rule 2–29(a)(2)* and *NFA Compliance Rule 2–9).* General antifraud provisions apply to oral statements, and additional requirements govern promotional materials and advertisements *(Reg. 4.41* for CPOs/CTAs; *NFA Compliance Rule 2–9* and *Interpretive Notice).* NFA Rules on disclosure and promotional materials also require certain information concerning a customer's ''break-even'' point as well as balanced presentation. In addition, prior to trading, extensive written disclosure and acknowledgement requirements must be met. *See Regs. 1.55, 4.13, 4.21, 4.24, 4.25, 4.31, 4.34, 4.35, 33.7, 32.5, 30.6, 31.11. Regs. 1.55 and 33.7* require FCMs and IBs to furnish ''Risk Disclosure Statement'' and receive acknowledgement.[23] *Reg. 4.21* requires CPOs to provide disclosure document before soliciting, accepting, or receiving funds. *Reg. 4.13* applies to exempt CPOs. *Reg. 4.31* requires CTAs to provide disclosure document before soliciting or entering into agreement with prospective client.
SECTION 310.5: RECORDKEEPING	
(a) Seller/telemarketer must keep the following for 24 months from date produced: advertisements, brochures, scripts, promotional materials; name/address of prize recipients and prizes of $25 or more awarded; name/address of customers and goods purchased; name/address/telephone and job titles of sales employees; and verification authorizations.	Recordkeeping Requirements under CEA and Commission Regulations. *See CEA, 4g, 4n, 7 U.S.C. 6g, 6n; Regs. 1.12, 1.18, 1.31, 1.33, 1.34, 1.35, 1.37, 1.55, 3.12, 4.23,* and *4.32.*[24] Generally, *Reg. 1.31* requires all required books and records be kept for 5 years, and be readily accessible for CFTC and Department of Justice inspection for the first 2 years. Registration requirements for APs, *see Reg. 3.12,* cover certain information required by FTC rule. *NFA Compliance Rule 2–29* and accompanying *Interpretive Notice* impose recordkeeping and other requirements for brochures, scripts, and promotional material. *NFA Rule 2–10* requires members to maintain all books and records appropriate to the conduct of their business. *See also Reg. 1.40* (FCMs and contract markets must furnish CFTC, upon request, copies of letters, circulars, telegrams or reports published or given general circulation on crop or market information or conditions affecting the price of any commodity).
(b) Keep records as in manner seller/telemarketer keeps records in ordinary course of business.	*See* Comparison for 310.5(a).

(c) Seller and telemarketer may, by written agreement, allocate recordkeeping obligations.	*See* Comparison for 310.5(a).
(d) Governs recordkeeping upon dissolution or sale of business.	*See* Comparison for 310.5(a).
SECTION 310.7: ACTIONS BY STATES AND PRIVATE PERSONS	
(a): Requires Attorney General, other State officers authorized to bring suit, and any private person who brings an action under Telemarketing Act to serve written notice of action on FTC.	*CEA, 6d,* 7 U.S.C. 13a–2, authorizes states to prosecute violations of CEA in federal court; notice of filing and copy of pleading must be given to the CFTC.
	CEA, 14, 7 U.S.C. 18 (Reparations Procedure) authorizes reparations actions by any person complaining of violation of CEA, Commission Regulations, or Commission order by a registrant. *See also Part 12 of Regs.* (Rules Relating to Reparations Proceedings).
	CEA, 17(b)(10), 7 U.S.C. 21(b)(10), requires NFA to provide procedure through arbitration or otherwise to settle customer claims and grievances against its members. *NFA Code of Arbitration, Section 2* provides generally that members must submit to arbitration for any dispute filed with NFA by a customer. *See also Reg. 170.8* (Settlement of Customer Disputes).
(b): Nothing in this section prohibits Attorney General or other authorized State officials from proceeding in State court for violations of any civil or criminal state statute.	*CEA, 6d(8),* 7 U.S.C. 13a–2(8), allows states to proceed in state court against certain registrants for violations of antifraud provisions. *CEA, 12(e),* 7 U.S.C. 16(e), authorizes states to proceed in state court for illegal ''off-exchange'' transactions.

[19] *See* NFA Notice to Members (June 19, 1996).

[20] Of the thirty-eight complaints that NFA has issued alleging a violation of NFA Compliance Rule 2–29(a)(2), NFA considered a pattern of inappropriate calling (*i.e.*, calling at irregular hours or making excessive calls) as a factor in initiating eighteen cases and the use of profane language as a factor in three cases.

[21] As confirmed by NFA's recent Notice to Members, repeated or continuous calls made with an intent to annoy, abuse, or harass are specifically prohibited by Rule 2–29(a)(2).

[22] NFA considers the time when calls were placed when issuing complaints under NFA Compliance Rule 2–29(a)(2). *See supra* n. 20.

[23] Neither Reg. 1.55 nor Reg. 33.7 relieves FCMs and IBs from otherwise applicable disclosure and other requirements. *See* Reg. 1.55(f) (FCMs and IBs not relieved from any other disclosure obligation under applicable law); Reg. 33.7(f) (FCMs and IBs not relieved from any other obligation under CEA or CFTC regulations, including obligation to disclose all material information).

[24] *Regs. 1.10, 1.12, 1.18, 1.31, 1.32, 1.35* govern recordkeeping and reporting obligations for FCMs and IBs. *Reg. 1.33* requires FCMs to furnish monthly and confirmation statements. *Reg. 1.34* requires FCMs to keep ''point balance'' and monthly listings of open option positions carried for option customers marked to market. *CEA, 4n,* 7 U.S.C. 6n, requires CPOs and CTAs to keep books and records for at least 3 years, but is superseded by the general five-year requirement of *Reg. 1.31. Regs. 4.23 and 4.33* also govern recordkeeping by CPOs and CTAs.

D. Conclusion

As the chart and discussion above reflect, existing provisions of the CEA, Commission Regulations, and NFA rules address and prohibit many of the same categories of telemarketing abuse targeted by the FTC's recently promulgated Telemarketing Sales Rule. Accordingly, the CFTC has determined that existing rules provide protection from deceptive and abusive telemarketing acts and practices that is ''substantially similar'' to the protection provided by the FTC's rule. Given its determination, the CFTC has also determined that it is unnecessary for it to promulgate additional telemarketing rules under the Telemarketing Act at this time.

To ensure that it remains apprised of developments in the area of telemarketing, however, the CFTC has asked NFA to continue to focus, in the course of performing member audits,[25] on telemarketing acts and practices that it believes may fall outside the scope of existing rules and to inform the Commission of the results of those audits.[26] Should the information provided by NFA indicate a need for additional telemarketing rules, advisories, or other guidance, the Commission will work with NFA to undertake rulemaking or other activities necessary to provide appropriate protection. Through such ongoing monitoring and evaluation of telemarketing acts and practices, the CFTC will ensure that its rules continue to provide protection from deceptive and abusive telemarketing acts and practices as those practices may arise in the future.

Issued in Washington, DC, on June 18, 1996.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 96–15995 Filed 6–21–96; 8:45 am]

BILLING CODE 6351–01–P

[25] As part of its audit and compliance functions, NFA conducts ''front-office audits,'' which address sales practices, including telemarketing.

[26] NFA's obligation to report on any such telemarketing acts and practices is separate from, and additional to, its existing reporting and auditing obligations under the CEA and Commission Regulations.

DEPARTMENT OF STATE

Office of Protocol

22 CFR Part 4

[Public Notice 2402]

Notification of Foreign Official Status; Elimination and Reinvention of Regulations

AGENCY: Office of Protocol, State.

ACTION: Final rule.

SUMMARY: The Department of State is eliminating and reinventing its regulations as part of the President's Regulatory Reinvention Initiative. In furtherance of this project, the Office of Protocol has determined that 22 CFR Part 4 should be updated and clarified to reflect changes which have occurred since that part originally was published.

EFFECTIVE DATE: June 24, 1996.

FOR FURTHER INFORMATION CONTACT: Lawrence Dunham, Assistant Chief of Protocol (202) 647–1985.

SUPPLEMENTARY INFORMATION: 22 CFR, Part 4 is that portion of the Department's regulations setting forth

the rules which foreign embassies must follow to notify the Office of Protocol of the arrival or employment, in the United States, of the foreign government officers or employees (including domestics and family members) described below. Since it originally was promulgated, changes in the notification procedure, as well as in the documents required, have taken place, and the Department has determined that it is desirable to update and simplify the regulations. This involves a foreign affairs function of the United States and thus is excluded from 5 U.S.C. 553 and from analyses under the Regulatory Flexibility Act of 1980. In addition the modifications set forth do not change the existing procedure fundamentally and merely reflect changes (such as new form numbers) which already have gone into effect.

While this rule is legally exempt from review under Executive Order 12866, it has been reviewed to ensure consistency with its overall policies and objectives. This final rule does not contain a new or amended information requirement subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The forms referenced in the regulation have been notified in the Federal Register and approved by OMB as required by that act.

List of Subjects in 22 CFR Part 4

Aliens, Foreign officials.

Accordingly, 22 CFR, Part 4 is revised to read as follows:

PART 4—NOTIFICATION OF FOREIGN OFFICIAL STATUS

Authority: 22 U.S.C. 2651a(a)(4).

§ 4.1 General.

In accordance with Article 10 of the Vienna Convention on Diplomatic Relations and Article 24 of the Vienna Convention on Consular Relations, diplomatic missions must notify the Office of Protocol immediately upon the arrival, in the United States, of any foreign government officer or employee (including domestics and family members), who are serving at diplomatic missions, consular posts, or miscellaneous foreign government offices. If the employee is already in the United States in some other capacity, the notification should be made upon assumption of duties. This initial notification requirement also includes all U.S. citizens and permanent resident aliens who are employed by foreign missions.

§ 4.2 Procedure.

Notification and subsequent changes are made as follows:

(a) Diplomatic and career consular officers and their dependents: Form DSP–110, *Notification of Appointment of Foreign Diplomatic Officer and Career Consular Officer*;

(b) All other foreign government employees who are serving at diplomatic missions, consular posts, or miscellaneous foreign government offices and their dependents: Form DSP–111, *Notification of Appointment of Foreign Government Employee*.

(c) Honorary consular officers: Form DSP–112, *Notification of Appointment of Honorary Consular Officer*.

(d) Missions should use Form DSP–113, *Notification of Change—Identification Card Request*, to promptly inform the Department of State of any change in the status of officers or employees of the missions and their family members originally reported to Protocol, or to apply for an identification card.

(e) Upon termination of employment of any diplomatic or consular officer, honorary consular officer, embassy or consular employee, or miscellaneous foreign government staff member, a Form DSP–115, *Notice of Termination of Diplomatic, Consular, or Foreign Government Employment*, must be submitted to the Office of Protocol.

Dated: May 29, 1996.

Molly Raiser,

Chief of Protocol.

[FR Doc. 96–14824 Filed 6–21–96; 8:45 am]

BILLING CODE 4710–20–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

[SPATS No. CO–029–FOR]

Colorado Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; correction.

SUMMARY: In this document, the office of Surface Mining Reclamation and Enforcement (OSM) is correcting its discussion and approval of a proposed amendment to the Colorado regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM's correction pertains to Colorado's intent to withdraw from a proposed amendment consideration of proposed rules pertaining to Colorado's show cause orders and patterns of violations involving violations of water quality effluent standards.

EFFECTIVE DATE: June 24, 1996.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Telephone: (303) 672–5524.

SUPPLEMENTARY INFORMATION: On February 19, 1996 (administrative record No. CO–675–9), Colorado submitted revisions to a November 20, 1995, formally-proposed amendment to its approved program (administrative record No. CO–675). In the February 19, 1996, submittal, Colorado indicated that the State-initiated proposed revisions to Rules 5.03.3(1) and (2), pertaining to show cause orders and patterns of violations involving violations of water quality effluent standards, had been deleted from the proposed amendment and intended that OSM withdraw the revisions proposed at Rules 5.03.3(1) and (2) from consideration during its review of the amendment package. In the preamble of the May 29, 1996, Federal Register notice (61 FR 26792, administrative record No. CO–675–16) approving Colorado's proposed amendment, OSM inadvertently discussed and approved Rules 5.03.3(1) and (2) as they had been proposed in the original November 20, 1995, submittal.

The purpose of this document is to notify the public that Colorado's November 20, 1995, proposed revisions to Rules 5.03.3(1) and (2), had been withdrawn by Colorado on February 19, 1996. Accordingly, OSM's May 29, 1996, Federal Register (Vol. 61, No. 104, pages 26792 through 26801) preamble discussion (finding No. 16.b, page 26798, third column, last paragraph) and approval (Director's decision, page 26801, first column, eleventh paragraph) of revisions to proposed Rules 5.03.3(1) and (2) should be disregarded.

Dated: June 13, 1996.

Richard J. Seibel,

(Regional Director) Western Regional Coordinating Center.

[FR Doc. 96–16007 Filed 6–21–96; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–96–011]

RIN 2115–AE46

Special Local Regulation: Fireworks Displays Within the First Coast Guard District

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing special local regulations for annual fireworks displays that occur throughout the First Coast Guard District. This regulation is necessary to control vessel traffic within the immediate vicinity of the fireworks launch sites and to ensure the safety of life and property during each event.

EFFECTIVE DATE: This section is effective on June 24, 1996.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander James B. Donovan, Office of Search and Rescue, First Coast Guard District, (617) 223–8278.

SUPPLEMENTARY INFORMATION:

Regulatory History

A notice of proposed rulemaking (NPRM) was published on May 23, 1996, (61 FR 25835) in the Federal Register proposing to establish a permanent special local regulation for the annually recurring fireworks displays throughout the First Coast Guard District. No comments were received and no hearing was requested.

Background and Purpose

Each year, organizations in the First District sponsor fireworks displays in the same general location during the same general time period. The Coast Guard is establishing a special local regulation that creates a regulated area surrounding the launch platform used during each fireworks display listed in Table 1 of the new regulation. Table 1 provides dates and locations for the annual fireworks events. Each event listed in Table 1 will use a barge or on-shore site as the fireworks launch platform. Given the concentration of explosives at the launch site, it is necessary to establish special local regulations to control vessel movement within a 500 yard radius exclusion zone around the launch platform to ensure the safety of persons and property at these events. In the event the fireworks are launched from shore, the regulated area will only include navigable waters that fall within a 500 yard radius of the launch site. Coast Guard personnel on-scene may allow persons within the 500 yard radius should conditions permit. The Coast Guard will publish a notice in the Federal Register each year which provides the exact dates and times for these events.

Good cause exists for providing for this rule to become effective in less than 30 days. Due to the need to publish notice in the Federal Register which will provide exact dates and times of each event and the necessity to have the regulation in effect for these events over the Fourth of July weekend, this final rule is being made effective in less than 30 days after publication. Any delay encountered in making this rule effective would be contrary to the public interest as the rule is needed to ensure the safety of the boating public during these events.

Discussion of Changes

Minor changes have been made to the NPRM and are contained in this final rule. The following changes have been made to clarify portions of the rule and make it easier to read: events listed in the table have been placed in alphabetical order; in the final regulation, paragraph (b)1 was deleted; the *Effective dates* section has been modified to better describe the duration of the regulation; and the regulated area has been further described by the term ''navigable waters.''

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). Due to the short duration of each fireworks display, the advance notice provided to the marine community, and the small size of each regulated area, the Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact, on small entities, of a rule for which a general notice of proposed rulemaking is required. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons mentioned in the Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impacts of this rule and concluded that, under paragraph 2.B.2.e.34(h) of COMDTINST 16475.1B, (as revised by 61 FR 13564, March 27, 1996) this rule is a special local regulation issued in conjunction with annual regattas or marine parades and is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Records and recordkeeping requirements, Waterways.

Final Regulation

For reasons set out in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 USC 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.114 is added to read as follows:

§ 100.114 First Coast Guard District Fireworks.

(a) *Regulated area.* That area of navigable waters within a 500 yard radius of the launch platform for each fireworks display listed in Table 1.

Table 1—Fireworks Displays

1. American Legion Post 83 Fireworks
Sponsor: Town of Branford American Legion Post 83
Date: Date within the first week of July
Location: Branford Point, Branford, CT

2. Anniversary Fireworks
Sponsor: Town of Chilmark
Date: Weekend in September
Location: Menemsha Beach, Chilmark, MA

3. Bangor Fireworks
Sponsor: Bangor 4th of July Corporation
Date: Independence Day holiday weekend
Location: Bangor/Brewer waterfront, ME

4. Bar Harbor Fireworks
Sponsor: Bar Harbor Chamber of Commerce
Date: Independence Day holiday weekend
Location: Bar Harbor/Bar Island, ME

5. Bayville Crescent Club Fireworks
Sponsor: Bayville Crescent Club, Bayville, NY
Date: Independence Day holiday weekend
Location: Cooper Bluff, Cone Neck, NY

6. Belfast Fireworks
Sponsor: Belfast Bay Festival Committee
Date: Third Saturday in July
Location: Belfast Bay, ME

7. Boston Harborfest Fireworks
Sponsor: Harborfest Committee
Date: Harborfest Week Celebration in June or first week in July
Location: Boston Inner Harbor, Boston, MA

8. Boys Harbor Fireworks Extravaganza
Sponsor: Boys Harbor Inc.
Date: Second or third weekend in July
Location: Three Mile Harbor, East Hampton, NY

9. Brick Founders Day Fireworks
Sponsor: Brick Township Chamber of Commerce
Date: First weekend in June
Location: Metedeconk River, Windward Beach, Brick Township, NJ

10. Brick Summerfest Fireworks
Sponsor: Brick Township Chamber of Commerce
Date: Independence Day holiday weekend
Location: Metedeconk River, Windward Beach, Brick Township, NJ

11. Bristol 4th of July Fireworks
Sponsor: Bristol Fourth of July Committee
Date: Independence Day holiday weekend
Location: Bristol Harbor, Bristol, RI

12. Change Fireworks
Sponsor: Change, Medford, NY
Date: Date within first two weekends of August
Location: Short Beach, Nissequogue, NY

13. City of New Bedford Fireworks
Sponsor: City of Bedford
Date: Independence Day holiday weekend
Location: New Bedford Harbor, New Bedford, MA

14. City of Norwalk Fireworks
Sponsor: Norwalk Recreation and Parks Department
Date: Independence Day holiday weekend
Location: Calf Pasture Beach, Long Island Sound, Norwalk, CT

15. Cow Harbor Day Fireworks
Sponsor: Village of Northport Harbor
Date: Date within last two weekends of September
Location: Sand Pit, Northport Harbor, Northport, NY

16. Devon Yacht Club Fireworks
Sponsor: Devon Yacht Club, Amagansett, NY
Date: Date within the first week of July
Location: Devon Yacht Club, Amagansett, NY

17. Edgartown Fireworks
Sponsor: Edgartown Firefighters Association
Date: Independence Day holiday weekend
Location: Edgartown Harbor, Edgartown, MA

18. Fairfield Aerial Fireworks
Sponsor: Fairfield Park Commission
Date: Independence Day holiday weekend
Location: Jennings Beach, Long Island Sound, Fairfield, CT

19. Fall River Celebrates America Fireworks
Sponsor: Fall River Chamber of Commerce
Date: Second Saturday in August
Location: Taunton River, vicinity of buoy #17, Fall River, MA

20. Falmouth Fireworks
Sponsor: Falmouth Fireworks Committee
Date: July 4
Location: Falmouth Harbor, .25 nm east of buoy #16, Falmouth, MA

21. Fireworks on the Navesink
Sponsor: Red Bank Fireworks Committee
Date: Independence Day holiday weekend
Location: Navesink River, 4 nm WSW Oceanic Bridge, Red Bank, NJ

22. First Night Fireworks
Sponsor: First Night Inc.
Date: January 1, upon the stroke of midnight
Location: Boston Inner Harbor, Boston, MA

23. First Night Mystic
Sponsor: Mystic Community Center
Date: December 31
Location: Mystic River, Mystic, CT

24. Gloucester Fireworks
Sponsor: Gloucester Chamber of Commerce
Date: Labor Day holiday weekend
Location: Gloucester Harbor, Gloucester, MA

25. Hartford Riverfest
Sponsor: July 4th Riverfest, Inc.
Date: Independence Day holiday weekend
Location: Connecticut River, Hartford, CT

26. Hartford Riverfront Regatta
Sponsor: Riverfront Recapture Inc.
Date: First or second weekend in August
Location: Connecticut River, Hartford, CT

27. Hempstead Fireworks
Sponsor: Town of Hemstead, NY
Date: Date within the first week of July
Location: Point Lookout, Hempstead, NY

28. Jones Beach State Park Fireworks
Sponsor: Long Island State Park Administration Headquarters
Date: Independence Day holiday weekend
Location: Fishing Pier, Jones Beach State Park, Wantagh, NY

29. Koch Industries Fireworks
Sponsor: Koch Industries
Date: Last weekend in August or first weekend in September
Location: Shinnecock Bay, South Hampton, NY

30. Marion Fireworks
Sponsor: Town of Marion Fireworks Committee
Date: Independence Day holiday weekend
Location: Silver Shell Beach, Marion, MA

31. Middletown Fireworks
Sponsor: City of Middletown
Date: Independence Day holiday weekend
Location: Connecticut River, Middletown, CT

32. Montauk Independence Day
Sponsor: Montauk Chamber of Commerce
Date: Independence Day holiday weekend
Location: Montauk Town Beach, Montauk NY

33. Norwich American Wharf Fireworks
Sponsor: American Wharf Marina
Date: Independence Day holiday weekend
Location: Norwich Harbor, Norwich, CT

34. Norwich Harbor Day Fireworks
Sponsor: Harbor Day Committee
Date: Last Sunday in August
Location: Norwich Harbor, off American Wharf Marina, Norwich, CT

35. Oaks Bluff Firworks
Sponsor: Oaks Bluff Fireman's Civic Association
Date: Last two weeks in August
Location: Oaks Bluff Beach, Oaks Bluff, MA

36. Old Lyme Fireworks
Sponsor: Mr. James R. Rice
Date: Independence Day holiday weekend
Location: Sound View Beach, Long Island Sound, Old Lyme, CT

37. Onset Fireworks
Sponsor: Prudential Commercial Onset Fire District
Date: Independence Day holiday weekend
Location: Onset Harbor, Onset, MA

38. Oyster Harbor Club Fourth of July Festival
Sponsor: Oyster Harbor Club, Inc.
Date: Independence Day holiday weekend
Location: Tim's Cove, North Day, Osterville, RI

39. Salute to Summer
Sponsor: Naval Education and Training Center
Date: Friday of weekend preceding Labor Day holiday weekend
Location: Narragansett Bay, East Passage, off Coasters Harbor Island, Newport, RI

40. Shooters Independence Day
Sponsor: Shooters Waterfront Cafe USA
Date: July 4
Location: Providence River off India Point Park, Providence, RI

41. Staten Island's 4th of July
Sponsor: Borough of Staten Island
Date: Independence Day holiday weekend
Location: Raritan Bay, vicinity of federal anchorages 44 and 45, Ward Point Bend, NY/NJ

42. Stamford Fireworks
Sponsor: City of Stamford
Date: Date within first two weeks of July
Location: Westcott Cove, Stamford, CT

43. Stratford Fireworks
Sponsor: Town of Stratford
Date: Independence Day holiday weekend
Location: Short Beach, Stratford, CT

44. Subfest Fireworks
Sponsor: U.S. Naval Submarine Base
Date: Independence Day holiday weekend
Location: Thames River, Groton, CT

45. Summer Music Fireworks
Sponsor: Summer Music Inc.
Date: Weekend during month of August
Location: Niantic River, Harkness Park, Waterford, CT

46. Taste of Italy
Sponsor: Italian Heritage Committee
Date: Weekend following Labor Day holiday weekend
Location: Norwich Harbor, off Norwich Marina, Norwich, CT

47. Thames River Fireworks
Sponsor: Town of Groton
Date: Weekend following Independence Day holiday weekend
Location: Thames River, off Electric Boat, Groton, CT

48. Tiverton Waterfront Festival
Sponsor: Tiverton Waterfront Festival Committee
Date: Independence Day holiday weekend
Location: Grinnel's Beach, Sakonnet River, Tiverton, RI

49. Town of Babylon Fireworks
Sponsor: Town of Babylon, NY
Date: Date within the first two weeks of July
Location: Nezeras Island, Babylon, NY

50. Town of Barnstable Fireworks
Sponsor: Town of Barnstable
Date: Independence Day holiday weekend
Location: Dunbar Point/Kalmus Beach, Barnstable, MA

51. U.S. Open Fireworks
Sponsor: Barons Cove Inn, Sag Harbor, NY
Date: Date within the middle two weeks of June
Location: Barons Cove, Sag Harbor, NY

52. Walsh's Fireworks
Sponsor: Mr. Patrick Walsh
Date: Independence Day holiday weekend
Location: Union River Bay, ME

53. Wellfleet Fireworks
Sponsor: Wellfleet Fireworks Committee
Date: Independence Day holiday weekend
Location: Indian Neck Jetty, Wellfleet, MA

54. Westport P.A.L. Fireworks
Sponsor: Westport Police Athletic League
Date: Independence Day holiday weekend
Location: Compo Beach, Westport, CT

55. Weymouth 4th of July Fireworks
Sponsor: Town of Weymouth Harbormaster
Date: Independence Day holiday weekend
Location: Weymouth Fore River, Weymouth, MA

56. Yampol Family Fireworks
Sponsor: Azurite Corp. LTD., Fort Lauderdale, FL
Date: Date within the last weekend of May
Location: Barons Cove, Sag Harbor, NY

57. Yarmouth-Dennis Fireworks
Sponsor: Yarmouth-Dennis Chamber of Commerce
Date: Independence Day holiday weekend
Location: Nantucket Sound, east of channel entrance to Bass River, Yarmouth, MA

(b) *Special local regulations.*

(1) No person or vessel may enter, transit, or remain within the regulated area during the effective period of regulation unless authorized by the Coast Guard patrol commander.

(2) Vessels encountering emergencies which require transit through the regulated area should contact the Coast Guard patrol commander on VHF Channel 16. In the event of an emergency, the Coast Guard patrol commander may authorize a vessel to transit through the regulated area with a Coast Guard designated escort.

(3) All persons and vessels shall comply with the instructions of the Coast Guard on-scene patrol commander. On-scene patrol personnel may include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon hearing five or more short blasts from a U.S. Coast Guard vessel, the operator of a vessel shall proceed as directed. Members of the Coast Guard Auxiliary may also be present to inform vessel operators of this regulation and other applicable laws.

(c) *Effective dates.* This section is in effect from one hour before the scheduled start of the event until thirty minutes after the last firework is exploded for each event listed in Table One on the Dates and times specified in a Federal Register document.

Dated: June 7, 1996.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 96–15935 Filed 6–21–96; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD01–96–025]

RIN 2115–AE46

Special Local Regulation: Newport—Bermuda Regatta, Narragansett Bay, Newport, RI

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent special local regulation for the Newport—Bermuda Regatta. The event will be held on June 21, 1996, and biennially thereafter on a date and times published in a Federal Register document. The regatta begins in the approach to Newport Harbor, Newport, RI, in the East Passage of Narragansett Bay, continuing offshore to Bermuda, U.K. This regulation is needed to control vessel movement in the confined waters of the regatta start area.

EFFECTIVE DATE: This section is effective on June 24, 1996.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander James B. Donovan, Assistant Search and Rescue Section, First Coast Guard District, (617) 223–8278.

SUPPLEMENTARY INFORMATION:

Regulatory History

A notice of proposed rulemaking (NPRM) was published on May 13, 1996, (61 FR 21999) in the Federal Register proposing to establish a permanent special local regulation for the Newport-Bermuda Regatta. No comments were received and no hearing was requested.

Background and Purpose

The 1996 Newport-Bermuda Regatta is the fortieth running of the event. In the past, the Coast Guard has promulgated individual regulations for each year's race. Given the recurring nature of the event, the Coast Guard is establishing a permanent regulation. The rule establishes a regulated area on Narragansett Bay, in the East Passage, and provides specific guidance to control vessel movement during the race.

This event includes up to 120 ocean going sailboats racing from the approach to the entrance of Newport Harbor, Newport, RI, to Bermuda, U.K. The event typically attracts approximately 150–200 spectator craft. The Coast Guard will assign a patrol to the event, and the race course starting area will be marked. However, due to the large number of participants and anticipated spectator craft, it is necessary to establish a special local regulation to control spectator and commercial vessel movement within the confined starting area. Spectator craft are authorized to watch the race from any area as long as they remain outside the designated regulated area. In emergency situations, provisions may be made to establish safe escort by a Coast Guard or Coast Guard designated vessel for vessels requiring transit through the regulated area.

Good cause exists to make this rule effective in less than 30 days. Due to the need to provide for a comment period in the respective NPRM and the need to establish regulations for this years event, there is insufficient time to publish this rule 30 days before the event is scheduled to begin. The Coast Guard believes delaying the event in order to provide a delayed effective date would be contrary to the public interest given this event's local popularity and that no comments were received objecting to the proposed regulation.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the limited duration of the race, the extensive advisories that will be made to the affected maritime community, and the minimal restrictions which the regulation places on vessel traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed in the Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impacts of this rule and concluded that, under paragraph 2.B.2.e.34(h) of COMDTINST 16475.1B, (as revised by 61 FR 13563, March 27, 1996) this rule is a special local regulation issued in conjunction with a regatta or marine parade and is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.119, is added to read as follows:

§ 100.119 Newport-Bermuda Regatta, Narragansett Bay, Newport, RI

(a) *Regulated area.* The regulated area includes all waters of Narragansett Bay, Newport, RI, within the following points (NAD 83):

Latitude	*Longitude*
41°27′51″ N	071°22′14″ W
41°27′24″ N	071°21′57″ W
41°27′09″ N	071°22′39″ W
41°27′36″ N	072°22′55″ W

In the event that weather conditions prohibit a safe race start within the approach to Newport Harbor, the race will begin offshore and the following regulated area applies (NAD 83):

Latitude	*Longitude*
41°26′04″ N	071°22′16″ W
41°25′36″ N	071°21′58″ W
41°25′45″ N	071°22′40″ W
41°25′49″ N	071°22′56″ W

(b) *Special local regulations.*

(1) The Coast Guard patrol commander may delay, modify, or cancel the race as conditions or circumstances require.

(2) No person or vessel may enter, transit, or remain in the regulated area unless participating in the event or unless authorized by the Coast Guard patrol commander.

(3) Vessels encountering emergencies which require transit through the regulated area should contact the Coast Guard patrol commander on VHF Channel 16. In the event of an emergency, the Coast Guard patrol commander may authorize a vessel to transit through the regulated area with a Coast Guard designated escort.

(4) All persons and vessels shall comply with the instructions of the

Coast Guard on-scene patrol commander. On-scene patrol personnel may include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon hearing five or more short blasts from a U.S. Coast Guard vessel, the operator of a vessel shall proceed as directed. Members of the Coast Guard Auxiliary may also be present to inform vessel operators of this regulation and other applicable laws.

(c) *Effective date.* This section is in effect on June 21, 1996, from 10:00 a.m. to 3:30 p.m., and biennially thereafter on a date and times published in a Federal Register document.

Dated: June 14, 1996.

James D. Garrison,

Captain, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 96–15934 Filed 6–21–96; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD07–96–008]

RIN 2115–AE46

Special Local Regulations; Suncoast Kilo Run; Suncoast Offshore Challenge; Suncoast Offshore Grand Prix; Sarasota, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing special local regulations for Suncoast Kilo Run, Suncoast Offshore Challenge and Suncoast Offshore Grand Prix, all events sponsored by the S.O.R.A. (Suncoast Offshore Racing Association). The Suncoast Kilo Run event will be held annually at 8 a.m. to 1 p.m. EDT (Eastern Daylight Time), on the first Friday of July. The Suncoast Offshore Challenge event will be held annually at 10 a.m. to 4 p.m. EDT, on the first Saturday of July. The Suncoast Offshore Grand Prix event will be held annually at 10 a.m. to 4 p.m. EDT, on the first Sunday of July. These regulations are intended to promote safe navigation on the waters in the Gulf of Mexico in the vicinity of Sarasota and on the waters in North Sarasota Bay, Florida, by controlling the traffic entering, exiting, and traveling within these waters. These regulations are necessary to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: July 5, 1996.

ADDRESSES: Documents listed in this regulation are available for inspection or copying at U.S. Coast Guard Group St. Petersburg, operations office, 600 8th Ave. S.E., St. Petersburg, Florida 33701–5099 between 8 a.m. and 4 p.m. EDT, Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG J.W. Nelson, project officer, U.S. Coast Guard Group St. Petersburg, FL at (813) 824–7533.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, good cause exists to make this final rule effective in less than 30 days from the date of publication in the Federal Register. Following normal rulemaking procedures would have been impracticable, unnecessary, and contrary to the public interest. A notice of proposed rulemaking for this rule was published in the Federal Register (61 FR 19220) with a thirty day comment period ending on May 31, 1996. During the comment period, no comments were received regarding this rulemaking, and this final rule does not change the provisions of the notice of proposed rulemaking.

Regulatory History

On May 1, 1996, the Coast Guard published a notice of proposed rulemaking entitled ''Special Local Regulations; Suncoast Kilo Run; Suncoast Offshore Challenge; and Suncoast Offshore Grand Prix; Sarasota, FL'' (CGD07–96–008) in the Federal Register (61 FR 19220). The comment period ended on May 31, 1996. The Coast Guard received no comments during the proposed rulemaking period. A public hearing was not requested and one was not held.

Discussion of Regulations

These regulations are needed to provide for the safety of life during the Suncoast Kilo Run, Suncoast Offshore Challenge and Suncoast Offshore Grand Prix, all sponsored by the S.O.R.A. (Suncoast Offshore Racing Association). The regulations are intended to promote safe navigation on the waters in North Sarasota Bay and on the Gulf of Mexico in the vicinity of Sarasota, Florida, by controlling the traffic entering, exiting, and traveling within these waters. Historically during these races, there have been between 150 and 300 participant and spectator craft. There will be approximately between 50 and 100 power boats, 21 to 50 feet in length, participating in these races at high speeds. The anticipated concentration of spectator and participant vessels associated with the Suncoast Kilo Run, Suncoast Offshore Challenge and Suncoast Offshore Grand Prix poses a safety concern, which is addressed in these special local regulations. The Suncoast Kilo Run event will be held annually at 8 a.m. to 1 p.m. EDT, on the first Friday of July. The Suncoast Offshore Challenge event will be held annually at 11 a.m. to 4 p.m. EDT, on the first Saturday of July. The Suncoast Offshore Grand Prix event will be held annually at 11 a.m. to 4 p.m. EDT, on the first Sunday of July.

The special local regulations for the Suncoast Kilo Run will establish a ''no wake'' zone in an area between markers #13 (27°20.82 N, 82°33.78 W, LLNR 48035) and #17 (27°24.5 N, 82°36.8 W, LLNR 48190) in North Sarasota Bay. All coordinates referenced are datum: NAD 83. Spectator craft will be permitted in the area but will be required to stay clear of the designated race lanes. This race will be held annually on the first Friday of July, between 8 a.m. and 1 p.m. EDT.

The special local regulations for the Suncoast Offshore Challenge will not permit anchoring seaward of the shoreside legs of the racecourse out to three nautical miles from shore, from 10 a.m. to 4 p.m. EDT. Spectator craft will be permitted near the race area but will be required to stay clear of the race lanes. Anchoring for spectators will be permitted shoreward of the shoreside legs of the racecourse. All vessel traffic exiting New Pass between 11 a.m. to 4 p.m. EDT will exit the marked channel at New Pass Channel daybeacon #3 (27°26.46′ N, 82°41.7′ W, LLNR 18100), and #4 (27°26.4′ N, 82°41.68′ W, LLNR 18105), and will proceed in a northerly direction shoreward of the spectator craft until well clear of the race course. All coordinates referenced use datum: NAD 1983. Big Sarasota Pass will be closed to all inbound and outbound vessel traffic, other than spectator craft, from 10 a.m. and 4 p.m. EDT, annually during the first Saturday of July.

The special regulations for the Suncoast Offshore Grand Prix will not permit anchoring seaward of the shoreside legs of the racecourse out to three nautical miles from shore, from 10 a.m. to 4 p.m. EDT, annually on the first Sunday of July. Spectator craft will be permitted near the race area but will be required to stay clear of the race lanes. Anchoring for spectators will be permitted shoreward of the shoreside legs of the racecourse. All vessel traffic not involved with the Suncoast Offshore Grand Prix exiting New Pass between 10 a.m. and 4 p.m. EDT will exit the marked channel at New Pass Channel daybeacon #3 (27°26.46′ N, 82°41.7′ W, LLNR 18100) and #4 (27°26.4′ N, 82°41.68′ W, LLNR 18105), and will proceed in a northerly direction shoreward of the spectator craft, taking action to avoid a close-quarters situation with the spectator craft until finally past

and clear of the racecourse. All coordinates referenced use datum: NAD 1983. Big Sarasota Pass will be closed to all inbound and outbound vessel traffic, other than spectator craft, from 10 a.m. and 4 p.m. EDT, annually on the first Sunday of July.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6 (a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. These regulations will last for only 5 hours on each day of the event. No public comments were received during the notice of proposed rulemaking comment period.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under Section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605 (b) that this action will not have a significant economic impact on a substantial number of small entities.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this rule and has concluded that preparation of an environmental Impact Statement is not necessary. An environmental assessment and a finding of no significant impact have been prepared and are available in the docket for inspection of copying where indicated under **ADDRESSES**. The Coast Guard has concluded that this action would not significantly affect the quality of human environment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recorkeeping requirements, Waterways.

Regulations: In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new section § 100.718 is added to read as follows:

§ 100.718 Annual Suncoast Kilo Run; Sarasota Bay, Sarasota, FL.

(a) *Regulated area.* The regulated area is established in Sarasota Bat with the northwest corner point at Whale Key, position 27°23′53″ N, 82°37′46″ W, extending to the northeast corner point at Bayshore Gardens Channel, position 27°25′11″ N, 82°35′45″ W, extending to the southeast corner point at Whitaker Bayou, position 27°21′22″ N, 82°33′14″ W, and then to the southwest corner point at Quick Point, position 27°20′18″ N, 82°34′36″ W. All coordinates referenced use datum: NAD 83.

(b) *Special local regulations.*

(1) In accordance with these regulations, the regulated area is designated as a ''no wake'' zone. Spectator craft are permitted into the area, but are prohibited from entering the race course areas described in (b)(2) of this section.

(2) Inside the ''no wake'' zone are two designated areas surrounding the primary and alternate race courses. Primary course ''A'' is bounded by a line connecting the northeast corner point at position 27°22′10″ N, 82°36′09″ W, a southeast corner point at position 27°21′31″ N, 82°35′37″ W, a southwest corner point at position 27°21′27″ N, 82°35′48″ W, and a northwest corner point at position 27°22′05″ N, 82°36′16″ W. Alternate course ''B'' is bounded by a line connecting the northeast corner point at position 27°23′11″ N, 82°34′31″ W, a southeast corner point at position 27°22′35″ N, 82°34′03″ W, a southwest corner point at position 27°22′31″ N, 82°34′08″ W, and a northwest corner point at position 27°23′09″ N, 82°34′38″ W. All coordinates referenced use datum: NAD 83.

(3) Entry into the regulated area shall be in accordance with this regulation.

(c) *Effective date.* This section is effective at 8 a.m. and terminates at 1 p.m. EDT, annually during the first Friday of July.

a. A new section § 100.719 is added to read as follows:

§ 100.719 Annual Suncoast Offshore Challenge; Gulf of Mexico, Sarasota, FL.

(a) *Regulated area.* The regulated area is established by a line drawn from the start/finish position 27°19.15′ N, 82°35.90′ W, thence to position 27°18.81′ N, 82°34.90′ W, thence to position 27°18.21′ N, 82°34.48′ W, thence to position 27°16.43′ N, 82°34.99′ W, thence to position 27°15.70′ N, 82°34.29′ W, thence to position 27°15.86′ N, 82°33.44′ W, thence to position 27°14.73′10′ N, 82°32.37′ W, thence to position 27°14.62′ N, 82°32.54′ W, thence to position 27°14.94′ N, 82°35.25′ W, thence to position 27°20.03′ N, 82°37.38′ W, thence to position 27°20.32′ N, 82°37.16′ W, thence back to the start/finish position. All coordinates referenced use datum: NAD 1983.

(b) *Special local regulations.*

(1) No anchoring will be permitted seaward of the shoreside boundaries of the regulated area out to three nautical miles from shore, from 10 a.m. to 4 p.m. EDT, annually on the first Saturday of July.

(2) Anchoring for spectators will be permitted shoreward of the shoreside boundaries of the regulated area.

(3) All vessel traffic, not involved with the Suncoast Offshore Challenge, exiting New Pass between 11 a.m. and 4 p.m. EDT shall exist at New Pass Channel daybeacon #3 (27°26.46′ N, 82°41.7′ W, LLNR 18100) and #4 (27°26.4′ N, 82°41.68′ W, LLNR 18105), and shall proceed in a northerly direction shoreward of spectator craft taking action to avoid a close-quarters situation until finally past and clear of the racecourse. All coordinates referenced use datum: NAD 1983.

(4) Big Sarasota Pass will be closed to all inbound and outbound vessel traffic, other than spectator craft, from 10 a.m. to 4 p.m. EDT.

(5) Entry into the regulated area shall be in accordance with this regulation. Spectator vessels shall stay clear of race area at all times.

(c) *Effective date.* This section is effective at 10 a.m. and terminates at 4 p.m. EDT, annually during the first Saturday of July.

2. A new section § 100.720 is added to read as follows:

§ 100.720 Annual Suncoast Offshore Grand Prix; Gulf of Mexico, Sarasota, FL.

(a) *Regulated area.* The regulated area is established by a line drawn from the start/finish position 27°19.15′ N, 82°35.90′ W, thence to position 27°18.91′ N, 82°34.90′ W, thence to position 27°18.81′ N, 82°34.48′ W, thence to position 27°16.43′ N, 82°34.99′ W, thence to position 27°15.70′ N, 82°34.29′ W, thence to position 27°15.86′ N, 82°33.44′ W, thence to position 27°14.73′ N, 82°32.37′ W, thence to position 27°14.62′ N, 82°32.54′ W, thence to position 27°14.93′ N, 82°35.25′ W, thence to position 27°20.03′ N, 82°37.38′ W, thence to position 27°20.32′ N, 82°37.16′ W, thence back to the start/finish position. All coordinates referenced use datum: NAD 1983.

(b) *Special local regulations.*

(1) No anchoring will be permitted seaward of the shoreside boundaries of the regulated area out to three nautical miles from shore, from 10 a.m. to 4 p.m. EDT.

(2) Anchoring for spectators will be permitted shoreward of the shoreside boundaries of the regulated area.

(3) All vessel traffic not involved with the Suncoast Offshore Grand Prix, exiting New Pass between 10 a.m. and 4 p.m. EDT shall exit at New Pass Channel daybeacon #3 (27°26.46′ N, 82°41.7′ W, LLNR 18100) and #4 (27°26.4′ N, 82°41.68′ W, LLNR 18105), and shall proceed in a northerly direction shoreward of spectator craft taking action to avoid a close-quarters situation until finally past and clear of the racecourse. All coordinates referenced use datum: NAD 83.

(4) Big Sarasota Pass will be closed to all inbound and outbound vessel traffic, other than spectator craft, from 10 a.m. to 4 p.m. EDT.

(5) Entry into the regulated area shall be in accordance with this regulation. Spectator craft will stay clear of race area at all times.

(c) *Effective date.* This section is effective at 10 a.m. and terminates at 4 p.m. EDT, annually during the first Sunday of July.

Dated: June 11, 1996.

John W. Lockwood,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 96–15933 Filed 6–21–96; 8:45 am]

BILLING CODE 4910–14–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1228 and 1232

RIN 3095–AA18

Audiovisual Records Management

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: This regulation revises and expands NARA regulations pertaining to audiovisual records management and the transfer of permanent audiovisual records to the National Archives from Federal agencies. The revisions are necessary in order to update standards, to provide coverage for new audiovisual media that are used in the creation of Federal records, and to reflect the transfer to the Department of Commerce's National Technical Information Services of the centralized audiovisual distribution services formerly performed by the National Audiovisual Center. This regulation affects Federal agencies.

DATES: This rule is effective July 24, 1996. This incorporation by reference was approved by the Director of the Federal Register effective July 24, 1996.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at 301–713–6730 or TDD 301–713–6760.

SUPPLEMENTARY INFORMATION: NARA published a notice of proposed rulemaking on September 28, 1995, (60 FR 50158) for a 60-day comment period. Four written comments were received. The proposed rule addressed matters regarding the transfer of permanent audiovisual records to the National Archives from Federal agencies, particularly with regard to videotape copies of motion picture film, record elements for compact discs and video discs, audio and video tape recordings, and related captions or finding aids in electronic form. The proposed rule also revised audiovisual definitions, updated various standards, and deleted the provision for temporary storage space in NARA's cold storage vaults and regulations governing centralized audiovisual services. Additional information will be provided in a forthcoming revision of NARA's instructional guide, ''Managing Audiovisual Records.''

Following is a discussion of the issues raised in the written comments.

One agency asked whether agencies would have to modify their approved records disposition schedules (SF 115), especially for older series of records, to conform to the new requirements or could the agencies select a ''start'' date for implementation. These regulations are mandatory as of the effective date of this final rule. Agencies must follow the requirements specified in Part 1232 for all audiovisual records; however, agencies do not need to submit new SFs 115 merely to conform to the regulation and NARA will not apply the new transfer requirements in Part 1228 retrospectively to records that are in existence as of the effective date.

Section 1228.184 Audiovisual Records

Two agencies reported that the transfer provision relating to copies of audiovisual records, particularly color photographs, outlined in § 1228.184(b)(2) would be too expensive for agencies to implement. One of the agencies also objected to the requirements for the transfer of agency-acquired motion picture films outlined in § 1228.184(a)(2), indicating that if these were not created or purchased at the time of acquisition, ''this would impose an additional burden on the agency.'' The changes proposed in these paragraphs were intended to provide greater flexibility for agencies to meet long-standing requirements. Production of requisite copies is necessary to properly preserve and make available permanent agency audiovisual records. NARA is, therefore, retaining the minimum requirements that were included in the proposed rule, but has expanded the options provided for color photographs in § 1228.184(b)(2). NARA has also modified the wording in § 1228.184(c)(2) regarding analog audio recordings in response to one agency's observation that the broadcasting industry is moving toward other methods of both audio and video recording. This section now provides for a ''subsequent generation copy for reference.'' This language is consistent to the wording applying to video recordings in § 1228.184(d)(1).

Two agencies commented that the requirement pertaining to electronic versions of finding aids and production documentation mentioned in § 1228.184(e)(1) would present an undue burden on agencies when many agency electronic finding aids are created on personal computers. NARA agrees and has revised this section to indicate that when this is the case, NARA will accept two versions of electronic finding aids: one in the native format and the other in a format that is migratable to software NARA can support at the time of transfer. Both versions must be part of the transfer.

Section 1232.26 Storage Conditions

One agency recommended replacing the reference NFPA 232–1991, Standard for the Protection of Records issued by the National Fire Protection Association with ANSI/NFPA 232A–1995, Fire Protection for Archives and Records Centers. NARA agrees that the suggested standard is more appropriate and made the change. To provide better guidance concerning what consitutes ''cold'' and ''cooler'' temperatures in § 1232.26(b), NARA has added a reference to the appropriate ANSI/NAPM standard.

Section 1232.30 Choosing Formats

One agency thought that the requirements at § 1232.30(a) regarding residual sodium thiosulfate (hypo) would require rewashing processed film, which could damage attached caption information. No change was made because it is stated that this procedure is for newly processed black-and-white photographic film, not rewashing film already processed. NARA also clarified the wording regarding the maximum level of residual sodium thiosulfate on newly processed film.

One agency asked NARA to define what constitutes ''industrial or professional recording equipment and videotape'' in § 1232.30(b)(c). The general wording was used to avoid imposing on agencies a specific and current professional technology that would quickly become obsolete. In addition, NARA emphasized in the proposed rule that consumer formats of audio and video recordings were not acceptable for creating permanent records.

Other

NARA has also corrected an inadvertant error in the proposed rule concerning the applicability of the regulation to all Federal agencies. The final rule applies to all Federal agencies, as defined at 36 CFR 1220.14. This is consistent with current practice. Section 1232.1 emphasized the applicability of Part 1232 to Executive agencies, but did not include wholely owned government corporations which are defined in 36 CFR 1220.14 as Executive agencies. The definition of ''agency'' in the proposed § 1232.10 also was inconsistent with the definition of that term in § 1220.14. The proposed § 1232.20 correctly stated that the audiovisual records management program responsibilities applied to all Federal agencies.

In this final rule, NARA has deleted the erroneous last sentence in § 1232.1 and the definition of ''agency'' in § 1232.10. We have retained the reference to the general definitions at § 1220.14 in an introductory sentence to that section.

NARA also has updated the editions of some of the standards incorporated by reference to reflect more current standards relating to audiovisual materials.

This rule is a not a significant regulatory action for purposes of Executive Order 12866 of September 30, 1993. As such, it has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small entities. This rule is not a major rule for purposes of Congressional review of regulations under 5 U.S.C. Chapter 8.

List of Subjects

36 CFR Part 1228

Archives and records.

36 CFR Part 1232

Archives and records, Incorporation by reference.

For the reasons set forth in the preamble, 36 CFR chapter XII is amended as follows:

PART 1228—DISPOSITION OF FEDERAL RECORDS

1. The authority citation for part 1228 continues to read as follows:

Authority: 44 U.S.C. chs. 21, 29, and 33.

2. Section 1228.184 is revised to read as follows:

§ 1228.184 Audiovisual records.

The following types of audiovisual records appraised as permanent shall be transferred to the National Archives as soon as they become inactive or whenever the agency cannot provide proper care and handling of the records, including adequate storage conditions, to facilitate their preservation by the National Archives (see part 1232 of this chapter). In general the physical types described below constitute the minimum record elements for archival purposes that are required to provide for future preservation, duplication, and reference needs.

(a) *Motion pictures.* (1) Agency-sponsored or produced motion picture films (e.g., public information films) whether for public or internal use:

(i) Original negative or color original plus separate optical sound track;

(ii) Intermediate master positive or duplicate negative plus optical track sound track; and,

(iii) Sound projection print and video recording, if both exist.

(2) Agency-acquired motion picture films: Two projection prints in good condition or one projection print and one videotape.

(3) Unedited footage, outtakes and trims (the discards of film productions) that are properly arranged, labeled, and described and show unstaged, unrehearsed events of historical interest or historically significant phenomena:

(i) Original negative or color original; and

(ii) Matching print or videotape.

(b) *Still pictures.* (1) For black-and-white photographs, an original negative and a captioned print although the captioning information can be maintained in another file such as a data base if the file number correlation is clear. If the original negative is nitrate, unstable acetate, or glass based, a duplicate negative on a polyester base is also needed.

(2) For color photographs, the original color negative, color transparency, or color slide; a captioned print of the original color negative; and/or captioning information as described above if for an original color transparency or original color slide; and a duplicate negative, or slide, or transparency, if they exist.

(3) For slide sets, the original and a reference set, and the related audio recording and script.

(4) For other pictorial records such as posters, original art work, and filmstrips, the original and a reference copy.

(c) *Sound recordings.* (1) Disc recordings:

(i) For conventional disc recordings, the master tape and two disc pressings of each recording, typically a vinyl copy for playback at 33⅓ revolutions per minute (rpm).

(ii) For compact discs, the origination recording regardless of form and two compact discs.

(2) For analog audio recordings on magnetic tape (open reel, cassette, or cartridge), the original tape, or the earliest available generation of the recording, and a subsequent generation copy for reference. Section 1232.30(d) of this subchapter requires the use of open-reel analog magnetic tape for original audio recordings.

(d) *Video recordings.* (1) For videotape, the original or earliest generation videotape and a copy for reference. Section 1232.30(c) of this subchapter requires the use of industrial-quality or professional videotapes for use as originals, although VHS copies can be transferred as reference copies.

(2) For video discs, the premaster videotape used to manufacture the

video disc and two copies of the disc. Video discs that depend on interactive software and nonstandard equipment may not be acceptable for transfer.

(e) *Finding aids and production documentation.* The following records shall be transferred to the National Archives with the audiovisual records to which they pertain.

(1) Existing finding aids such as data sheets, shot lists, continuities, review sheets, catalogs, indexes, list of captions, and other documentation that are helpful or necessary for the proper identification, or retrieval of audiovisual records. Agencies should contact the Nontextual Archives Division, or its appropriate audiovisual branch, to determine the type of hardware and software that is currently acceptable for transfer to the National Archives as an agency electronic finding aid that will accompany its audiovisual records. In general, however, agencies must transfer two copies of the electronic finding aid, one in its native format with its field structure documented, and a second copy in a contemporary format available at the time of transfer that NARA will be able to support and import to its database.

(2) Production case files or similar files that include copies of production contracts, scripts, transcripts, and appropriate documentation bearing on the origin, acquisition, release, and ownership of the production.

3. Part 1232 is revised to read as follows:

PART 1232—AUDIOVISUAL RECORDS MANAGEMENT

Subpart A—General

Subpart B—Audiovisual Records Management

Authority: 44 U.S.C. 2904 and 3101; and OMB Circular A–130.

Subpart A—General

§ 1232.1 Applicability and scope.

This part prescribes policies and procedures for managing audiovisual records to ensure adequate and proper documentation and authorized, timely, and appropriate disposition.

§ 1232.2 Objectives.

The objectives of audiovisual records management are to achieve the effective creation, maintenance, use, and disposition of audiovisual and related records by establishing standards for maintenance and disposition, physical security, and preservation and by reviewing recordkeeping practices on a continuing basis to improve procedures.

§ 1232.10 Definitions.

For the purposes of this part, the following definitions shall apply (see also § 1220.14 of this chapter for other definitions).

Audiovisual. Any pictorial or aural means of communicating information.

Audiovisual equipment. Equipment used for recording, producing, duplicating, processing, broadcasting, distributing, storing or exhibiting audiovisual materials or for providing any audiovisual services.

Audiovisual production. An organized and unified presentation, developed according to a plan or script, containing visual imagery, sound, or both, and used to convey information. An audiovisual production generally is a self-contained presentation. Audiovisual productions may include motion media with synchronous sound such as motion picture film, videotape or other video formats, audio recordings, and other media such as synchronized audio and visual presentations such as multimedia productions.

Audiovisual records. Records in pictorial or aural form that include still and motion media, sound recordings, graphic works, mixed media, and related finding aids and production files.

Subpart B—Audiovisual Records Management

§ 1232.20 Agency program responsibilities.

Each Federal agency, in providing for effective controls over the creation of records, shall establish an appropriate program for the management of audiovisual records. This program shall be governed by the following requirements:

(a) Prescribe the types of records to be created and maintained so that audiovisual activities and their products are properly documented. (Regulations on the appropriate types of permanent audiovisual records are located in § 1228.184 of this chapter.)

(b) Ensure that adequate training is provided to:

(1) Agency personnel responsible for the disposition of audiovisual records;

(2) Contractor personnel who have temporary custody of audiovisual records; and,

(3) All users who create, handle, or maintain audiovisual records or operate equipment for their use.

(c) Ensure that contract provisions protect the Government's legal title and control over audiovisual records and related documentation produced or maintained by contract. Ensure that contract provisions identify as deliverables any working papers/files that are needed for adequate and proper documentation. Include a provision that permits the Government to inspect contractor facilities used for the storage and handling of permanent or unscheduled audiovisual records. Agencies shall inspect such facilities at least once each year.

(d) Keep inventories indicating the location of all generations of audiovisual records, whether in agency storage or in another facility such as a laboratory or library distribution center.

(e) Schedule disposition of all audiovisual records as soon as practicable after creation. General Records Schedule 21 provides mandatory disposal authorization for temporary audiovisual records common to most Federal offices. Agencies must submit an SF 115, Request for Records Disposition Authority, to NARA to obtain authorization for the disposition of all other audiovisual records. The schedules covering permanent records must specify the different record elements identified in § 1228.184, and must always include related finding aids.

(f) Periodically review agency audiovisual recordkeeping practices for conformance with requirements and take necessary corrective action.

§ 1232.22 Nitrocellulose film.

Nitrocellulose-base film once used in the manufacture of sheet film and motion pictures may be occasionally found in records storage areas. The nitrocellulose base, a substance akin to gun cotton, is chemically unstable and highly inflammable.

(a) Agencies must remove nitrocellulose film materials from records storage areas.

(b) Agencies must immediately notify NARA about the existence of nitrocellulose film materials because of their age and instability. NARA will determine if they may be destroyed or destroyed after a copy is made for transfer, as appropriate.

(c) If NARA appraises nitrate film materials as disposable, but the agency wishes to retain them, agencies must follow the guidance in NFPA 40–1994,

Standard for the Storage and Handling of Cellulose Nitrate Motion Picture Film, which is incorporated by reference. NFPA 40–1994 is available from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. This standard is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, D.C. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register.

(d) The packing and shipping of nitrate film are governed by the following Department of Transportation regulations: 49 CFR 172.101, Hazardous materials table; 172.504, Transportation; 173.24, Standard requirements for all packages; and 173.177, Motion picture film and X- ray film—nitrocellulose base.

§ 1232.24 Unstable cellulose-acetate film.

Cellulose-acetate film, also known as safety film, is nonflammable and does not represent the same degree of hazard as nitrate film materials. Nonetheless, cellulose-acetate film also deteriorates over time. Temperature, humidity, harmful storage enclosures, and gaseous products influence the rate of deterioration. Agencies shall inspect cellulose-acetate film periodically for an acetic odor, wrinkling, or the presence of crystalline deposits on the edge or surface of the film that indicate deterioration. Agencies shall notify NARA within 30 days after inspection about deteriorating permanent or unscheduled audiovisual records composed of cellulose acetate so that they can be copied.

§ 1232.26 Storage conditions.

Agencies must:

(a) Provide audiovisual records storage facilities that are secure from unauthorized access and make them safe from fire, water, flood, chemical or gas damage and from other harmful conditions. See NFPA 232A–1995, Guide for Fire Protection for Archives and Records Centers issued by the National Fire Protection Association, which is incorporated by reference. The standard is available from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. This standard is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, D.C. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1CFR part 51. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register.

(b) Maintain good ambient storage conditions for permanent or unscheduled audiovisual records. Generally, the temperature should not exceed 70 degrees Fahrenheit and relative humidity should be maintained between 30–40% and not exceed 50%. Avoid fluctuating temperatures and humidity. Cooler temperatures and lower relative humidity are recommended for the storage of all film, to prolong the useful life of the film base and image. Cold temperatures combined with 30–35% relative humidity are especially recommended to retard the fading of color film. Optimal environmental conditions are stated in ANSI/NAPM IT9.11–1993, Imaging Media— Processed Safety Photographic Films—Storage. If possible store all permanently scheduled records in these conditions, and schedule them to be transferred to the National Archives as soon as possible.

(c) For the storage of permanent or unscheduled records, use audiovisual storage containers or enclosures made of noncorroding metal, inert plastics, paper products and other safe materials recommended and specified in ANSI standards: ANSI/NAPM IT9.11–1993, Imaging Media—Processed Safety Photographic Films—Storage; and ANSI IT9.2–1991, Imaging Media—Photographic Processed Films, Plates, and Papers—Filing Enclosures and Storage Containers. These standards, which are incorporated by reference, are available from the American National Standards Institute (ANSI), Inc., 11 West 42nd Street, New York, NY 10036. These standards are also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, D.C. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register.

(d) Store originals and use copies (e.g., negatives and prints) separately, whenever practicable.

(e) Store series of permanent and unscheduled x-ray films in accordance with this section, and store series of temporary x-ray films under conditions that will ensure their preservation for their full retention period, in accordance with ANSI/NAPM IT9.11–1993, Imaging Media—Processed Safety Photographic Films—Storage. This requirement does not apply to x-rays that are interspersed among paper records, as in case files.

§ 1232.28 Maintenance and operations.

Agencies must:

(a) Handle audiovisual records in accordance with commonly accepted industry practices because of their extreme vulnerability to damage. For further information, consult the American National Standards Institute (ANSI), Inc., 11 West 42nd Street, New York, NY 10036; and the Society of Motion Picture and Television Engineers, 595 West Hartsdale Avenue, White Plains, NY 10607.

(b) Use only personnel trained to perform their audiovisual duties and responsibilities and ensure that equipment intended for projection or playback is in good working order.

(c) Loan permanent or unscheduled audiovisual records to non-Federal recipients only in conformance with the provisions of part 1228 subpart E of this chapter. Such records may be loaned to other Federal agencies only if a record copy is maintained in the agency's custody.

(d) Take all steps necessary to prevent accidental or deliberate alteration or erasure of audiovisual records.

(e) Ensure that no information recorded on permanent or unscheduled magnetic sound or video media is erased.

(f) If different versions of audiovisual productions (e.g., short and long versions or foreign-language versions) are prepared, keep an unaltered copy of each version for record purposes.

(g) Maintain the association between audiovisual records and the finding aids for them, such as captions and published and unpublished catalogs, and production files and similar documentation created in the course of audiovisual production.

(h) Maintain disposable audiovisual records separate from permanent ones in accordance with General Records Schedule 21 and a records schedule approved by NARA for the agency's other audiovisual records.

§ 1232.30 Choosing formats.

Agencies must:

(a) When ordering photographic materials for permanent or unscheduled records, ensure that still picture negatives and motion picture preprints (negatives, masters, etc.) are composed

of polyester bases and are processed in accordance with industry standards as specified in ANSI/ISO 543–1990 (ANSI IT9.6–1991) Photography—Photographic Films—Specifications for Safety Film; and, ANSI/NAPM IT9.1–1992 Imaging Media (Film)—Silver-Gelatin Type— Specifications for Stability, which are incorporated by reference. (Currently, not all motion picture stocks are available on a polyester base.) It is particularly important to ensure that residual sodium thiosulfate (hypo) on newly processed black-and-white photographic film does not exceed .014 grams per square meter. Require laboratories to process film in accordance with this standard. Excessive hypo will shorten the longevity of film and accelerate color fading. Process color film in accordance with the manufacturer's recommendations. If using reversal type processing, request full photographic reversal; i.e., develop, bleach, expose, develop, fix, and wash. The standards cited in this paragraph are available from the American National Standards Institute (ANSI), Inc., 11 West 42nd Street, New York, NY 10036. These standards are also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, D.C. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials be published in the Federal Register.

(b) Refrain from using motion pictures in a final ''A & B'' format (two precisely matched reels designed to be printed together) for the reproduction of excerpts or stock footage.

(c) Use only industrial or professional recording equipment and videotape, previously unrecorded, for original copies of permanent or unscheduled recordings. Limit the use of consumer formats to distribution or reference copies or to subjects scheduled for disposal. Video cassettes in the VHS format are unsuitable for use as originals of permanent or unscheduled records due to their inability to be copied without significant loss in image quality.

(d) Record permanent or unscheduled audio recordings on ¼-inch open-reel tapes at 3 ¾ or 7 ½ inches per second, full track, using professional unrecorded polyester splice-free tape stock. Audio cassettes, including mini-cassettes, are not sufficiently durable for use as originals in permanent records or unscheduled records although they may be used as reference copies.

§ 1232.32 Disposition.

The disposition of audiovisual records shall be carried out in the same manner as that prescribed for other types of records in part 1228 of this chapter. For further instructions on the transfer of permanent audiovisual records to the National Archives see § 1228.184 of this chapter, Audiovisual Records.

Dated: June 14, 1996.

John W. Carlin,

Archivist of the United States.

[FR Doc. 96–15797 Filed 6–21–96; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[FRL–5526–2]

Control of Air Pollution; Removal and Modification of Obsolete, Superfluous or Burdensome Rules

AGENCY: Environmental Protection Agency.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to Clean Air Act final regulations, which were published April 11, 1996 (61 FR 16050). The regulations related to the removal and modification of obsolete, superfluous or burdensome Clean Air Act rules.

EFFECTIVE DATE: This action will be effective June 24, 1996.

FOR FURTHER INFORMATION CONTACT: Maureen Delaney, Office of Air and Radiation, Office of Policy Analysis and Review, (202) 260–7431.

SUPPLEMENTARY INFORMATION:

Background

On April 11, 1996, EPA published a final rule under the Clean Air Act deleting superfluous, obsolete or burdensome regulations from the Code of Federal Regulations (CFR).

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on April 11, 1996 of the final regulations (61 FR 16050), which were the subject of FR Doc. 96–8744, is corrected as follows:

On page 16061, in the third column, the heading for amendment number 38 is corrected to read ''§ 52.1227—[removed and reserved].''

On page 16062, in the third column, amendment number 67 is corrected to read ''67. Section 52.2296 through 52.2298 are removed and reserved.''

List of Subjects in 40 CFR Part 51

Environmental Protection, Air pollution control

Dated: June 17, 1996.

Richard D. Wilson,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 96–16021 Filed 6–21–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[NM–23–1–7101a; FRL–5500–7]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Supplement to the New Mexico State Implementation Plan (SIP) to Control Air Pollution in Areas of Bernalillo County Designated Nonattainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves a revision to the SIP consisting of the ''October 12, 1994, Supplement to the New Mexico State Implementation Plan to Control Air Pollution in Area(s) of Bernalillo County Designated Nonattainment''. This revision updates the narrative portion of the previously approved April 14, 1993, Supplement to the New Mexico SIP to Control Air Pollution in Areas of Bernalillo County Designated Nonattainment (see the December 21, 1993 Federal Register to reflect EPA's approval for lifting the construction ban in Bernalillo County. The construction ban was put in place by the Governor of New Mexico on May 20, 1980. The ban was repealed by EPA approval effective May 16, 1994, and appearing in the March 16, 1994 Federal Register.

DATES: This action is effective on August 23, 1996, unless notice is postmarked by July 24, 1996 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments should be mailed to Jole C. Luehrs, Chief, Air Permits Section (6PD–R), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the State's

petition and other information relevant to this action are available for inspection during normal hours at the following locations:

U.S. EPA, Region 6, Air Permits Section (6PD–R), 1445 Ross Avenue, Suite 700, Dallas, TX 75202–2733.

Air and Radiation Docket and Information Center, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

City of Albuquerque, Environmental Health Department, One Civic Plaza, Albuquerque, NM 87103.

Anyone wishing to review this petition at the Region 6 EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel R. Mitz, Air Permits Section (6PD–R), U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–8370.

SUPPLEMENTARY INFORMATION:

Background

On December 21, 1993, EPA approved an Albuquerque/Bernalillo County permit SIP revision which included the *April 14, 1993, Supplement to the New Mexico SIP to Control Air Pollution in Area(s) of Bernalillo County Designated Nonattainment* (58 FR 67326). This Supplement included a paragraph which stated that upon approval of Albuquerque/ Bernalillo County Air Quality Control Regulations (AQCR) 20 (*Authority-to-Construct Permits), 29 (Prevention of Significant Deterioration) and 32 (Construction Permits for Nonattainment Areas*) and the accompanying SIP supplements, there would be no need to continue the Governor's construction moratorium of May 20, 1980, which appeared in 40 Code of Federal Regulations (CFR) 52.1620(e)(18).

On December 21, 1993, EPA approved revised AQCRs 29 and 32. On March 16, 1994, EPA approved AQCR 20, which brought the Albuquerque/Bernalillo County New Source Review permitting program up to date and provided for the revocation of the construction ban for Albuquerque County. In response, on October 12, 1994, the State of New Mexico adopted a revised *Supplement to the New Mexico State Implementation Plan to Control Air Pollution in Area(s) of Bernalillo County Designated Nonattainment,* which noted the repeal of the construction moratorium.

Final Action

The EPA is approving the revised New Mexico SIP narrative entitled *October 12, 1994 Supplement to the New Mexico State Implementation Plan to Control Air Pollution in Area(s) of Bernalillo County Designated Nonattainment,* which acknowledges the repeal of the construction moratorium of May 20, 1980.

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision unless adverse or critical comments be filed. This action will be effective August 23, 1996, unless adverse or critical comments are postmarked by July 24, 1996. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received on this action, the public is advised that this action will be effective August 23, 1996.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, under 5 U.S.C. 605(b), EPA may certify that the rule will not have a significant impact on a substantial number of small entities (see 46 FR 8709). Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000. SIP approvals under section 110 and subchapter I, part D of the Clean Air Act (CAA) do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA from basing its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.,* 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 23, 1996. Filing a petition for reconsideration of this final rule by the Administrator does not affect the finality of this rule for purposes of judicial review; nor does it extend the time within which a petition for judicial review may be filed, or postpone the effectiveness of this rule. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

Nothing in this action shall be construed as permitting, allowing, or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this SIP or plan revision approved in this action, the State and any affected local or tribal governments have elected to adopt the program provided for under section 110 of the CAA. The rules and commitments approved in this action may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules and commitments being approved by this action will impose or lead to the imposition of any mandate upon the State, local, or tribal governments, either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Therefore, EPA has determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Office of Management and Budget (OMB) review

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Nonattainment areas.

Dated: April 11, 1996.

Lynda F. Carroll,

Acting Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart GG—New Mexico

2. Section 52.1620 is amended by adding paragraph (c)(61) to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(61) A revision to the New Mexico SIP to udpate the Supplement to the New Mexico State Implementation Plan to Control Air Pollution in Area(s) of Bernalillo County Designated Nonattainment to reflect EPA's approval for lifting the construction ban in Bernalillo County, superseding the supplement dated April 14, 1993.

(i) Incorporation by reference.

(A) October 12, 1994 Supplement to the New Mexico State Implementation Plan to Control Air Pollution in Area(s) of Bernalillo County Designated Nonattainment as approved by the Albuquerque/Bernalillo County Air Quality Control Board on November 9, 1994.

[FR Doc. 96–16023 Filed 6–21–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CA–19–2–725–a; FRL–5511–4]

Approval and Promulgation of Implementation Plans; California—Mammoth Lakes Nonattainment Area; PM_{10}

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA today approves the State Implementation Plan (SIP) submitted by the State of California for the purpose of bringing about attainment in the Mammoth Lakes Planning Area (MLPA) of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). The ''moderate'' area SIP was submitted by the State to satisfy certain Federal requirements in the Clean Air Act for an approvable nonattainment area PM_{10} plan for the MLPA.

The intended effect of approving this plan is to regulate emissions of PM_{10} in accordance with the requirements of the CAA, as amended in 1990.

DATES: This final rule is effective on August 23, 1996 unless adverse or critical comments are received by July 24, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the State's submittal and other information are contained in the docket for this rulemaking. The docket is available for inspection during normal business hours at the following locations:

U. S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105

California Air Resources Board, 2020 L Street, P.O. Box 2815, Sacramento, CA 95814

Great Basin Unified Air Pollution Control District, 157 Short Street, Suite 6, Bishop, CA 93514.

FOR FURTHER INFORMATION CONTACT: Stephanie G. Valentine (A–2–2), U. S. Environmental Protection Agency, Region 9, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1178.

SUPPLEMENTARY INFORMATION:

I. Background

On the date of enactment of the 1990 Clean Air Act Amendments, PM_{10} areas, including the Mammoth Lakes Planning Area, meeting the conditions of section 107(d) of the Act were designated nonattainment by operation of law. Once an area is designated nonattainment, section 188 of the Act outlines the process for classification of the area and establishes the area's attainment date. In accordance with section 188(a), at the time of designation, all PM_{10} nonattainment areas were initially classified as ''moderate'' by operation of law. See 40 CFR 81.303 (1993) A moderate area may subsequently be reclassified as ''serious'' if at any time EPA determines that the area cannot practicably attain the PM_{10} NAAQS by the applicable attainment date for moderate areas, December 31, 1994. Moreover, a moderate area must be reclassified if EPA determines within six months after the applicable attainment date that the area is not in attainment after that date. See section 188(b) of the Clean Air Act.

The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in subparts 1 and 4 of Title I of the Act. EPA has issued a ''General Preamble'' describing EPA's preliminary views on how the Agency intends to review SIPs and SIP revisions submitted under Title I of the Act, including those state submittals containing moderate PM_{10} nonattainment area SIP provisions. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in today's action and the supporting rationale. In today's rulemaking action on California's moderate PM_{10} SIP for the MLPA, EPA is applying its interpretations taking into consideration the specific factual issues presented.

Those states containing initial moderate PM_{10} nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991[1]:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology—RACT) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously

[1] There are additional submittals associated with moderate PM_{10} nonattainment plans, such as a permit program for the construction of new and modified major stationary sources and contingency measures. See sections 189(a) and 172(c)(9). These submittals were required to be submitted in 1992 and 1993, respectively, and are not the subject of today's action which addresses only those plan provisions required to be submitted on November 15, 1991.

as practicable but no later than December 31, 1994 or a demonstration that attainment by that date is impracticable;

3. Pursuant to section 189(c) of the Act, for plan revisions demonstrating attainment, quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

II. Today's Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals. See 57 FR 13565–66. In today's action, EPA approves the plan revision submitted to EPA on September 11, 1991, and the addenda submitted January 9, 1992, for the MLPA because it meets all of the applicable requirements of the Act.

A. Analysis of State Submission

1. Procedural Background

The Act requires states to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a state must be adopted after reasonable notice and public hearing.[2] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a state under the Act must be adopted by such state after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action. See section 110(k)(1) and 57 FR 13565. EPA's completeness criteria for SIP submittals are set out at 40 CFR Part 51, Appendix V (1993). EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

The State of California originally submitted the Mammoth Lakes Planning Area PM_{10} implementation plan revision to EPA on September 11, 1991. By operation of law, this submittal was deemed complete on March 11, 1992. On January 9, 1992, the State of California submitted a second revision to the Mammoth Lakes Planning Area PM_{10} SIP. This submittal contained revisions which are primarily administrative in nature to assist in the effective implementation of the SIP control strategies. By operation of law, this second submittal was deemed complete on July 9, 1992.

In today's action, EPA approves California's PM_{10} SIP submittal for the MLPA.

2. Accurate Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Because such inventories are necessary to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emissions inventories must be received with the submission. See 57 FR 13539.

California submitted a peak 24-hour PM_{10} emissions inventory for the MLPA which is based on a 1987–88 emissions inventory survey. This 1987–88 inventory identifies re-entrained dust and cinders from paved roads and emissions from fireplaces and wood stoves as the primary causes of nonattainment, contributing over 99 percent of total PM_{10} emissions during times of peak concentrations. The remaining 1 percent of the emissions is comprised of motor vehicle exhaust, tire-wear, and industrial sources. By applying known population growth factors to the 1987–88 inventory, the Great Basin Unified APCD also projected 1990, 1991, 1993, 1995, 2000, and 2005 inventories. The chart below identifies 1987–88 contributions to the emission inventory.

Source category	Peak 24-hour PM_{10} emissions (kg/day)	Percentage
Fireplaces	882	20.7
Woodstoves	957	22.5
Resuspended Road Dirt/Cinders	2,390	56.1
Motor Vehicles	23	0.5
Industrial	7	0.2
Total	4,259	100

EPA approves the emissions inventory because it generally appears to be accurate and comprehensive, and provides a sufficient basis for determining the adequacy of the plan revision's air quality analysis consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the Clean Air Act.[3] For further details see the Technical Support Document (TSD) that is contained in the docket for today's action.

3. RACM

As noted, the initial moderate PM_{10} nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993. See sections 172(c)(1) and 189(a)(1)(C). EPA's General Preamble for the Implementation of Title I of the Clean Air Act Amendments contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement. See 57 FR 13540–45 and 13560–61.

As stated in EPA's General Preamble, the suggested starting point for determining RACM for a particular area is to list all of the RACM measures for which EPA has issued guidance under section 190 of the Act. If a state receives substantive public comment demonstrating that additional measures may be reasonably available, those measures should then be added to the original list.

As noted in the Emissions Inventory section of this document, 99 percent of the PM_{10} nonattainment problem in the MLPA comes from resuspended road dust/cinders and fireplaces/woodstoves. The remaining one percent comes from motor vehicles and industrial sources. Given this emissions inventory with limited contributions from a number of source categories, a list of control measures was developed by the Great Basin Unified Air Pollution Control District for consideration in a draft SIP revision. Through the public hearing process, the list was refined to form a final control strategy that provides for attainment by the Clean Air Act deadline of December 31, 1994.

Where sources of PM_{10} do not contribute significantly to the PM_{10} problem in an area, EPA's policy is that a state is not reasonably required to implement potentially available control measures for such sources (57 FR 13543). Based upon the MLPA emissions inventory which is dominated by wood burning and road

[2] Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

[3] EPA issued guidance on PM_{10} emissions inventories prior to the enactment of the 1990 Clean Air Act Amendments in the form of the 1987 *PM_{10}* SIP Development Guideline. Pursuant to section 193 of the Amendments, the guidance provided in this document, as well as all other pre-Amendment guidance cited in this notice, remains in effect.

dust and cinders, and the fact that the area is able to demonstrate attainment of the PM_{10} NAAQS by the CAA deadline, EPA believes that the State has provided a reasoned justification for eliminating measures from its initial list of possible RACM. The remaining measures are legally enforceable. Therefore, EPA has concluded that the regulations adopted for the State's moderate area PM_{10} SIP revision represent RACM as required by sections 189(a)(1)(C) and 172(c) of the Act.

4. Control Strategy

The control strategy was developed by the GBUAPCD and the Town of Mammoth Lakes. The final control strategy relies upon the implementation of nine measures which were adopted as a Town Ordinance on November 7, 1990, and added into the Mammoth Lakes Municipal Code as Chapter 8.30, Particulate Emissions Regulations. These regulations were subsequently adopted by the Great Basin Unified APCD as Rule 431—Particulate Emissions—Town of Mammoth on November 6, 1991. The regulations will reduce emissions from re-entrained road cinders, will phase out non-certified wood burning appliances, and will institute wood burning curtailments during periods of high PM_{10} concentrations. The measures adopted by the Mammoth Lakes Town Council and subsequently adopted as Great Basin Unified APCD Rule 431 to control PM_{10} emissions are summarized in the following table.

Control measures	Source category
(1) Vacuum Street Sweeper for Cinders and Road Dust.	Road Dust/Cinders.
(1) Reduce Vehicle Traffic	Road Dust/Cinders.
(1) Institute Public Awareness Program for Wood Burning.	Wood Stoves/ Fireplaces.
(1) Replace or Remove Non-certified Wood Stoves Upon Resale.	Wood Stoves/ Fireplaces.
(2) Limit Installation of Woodstoves.	
(1) Ban Fireplaces in New Dwellings.	Wood Stoves/ Fireplaces.
(2) Require Transient Occupancy Units to Phase Out Fireplaces.	
(3) Require Fireplace Phase Out Upon Resale of Home.	
((1) Require Certification for Wood Stove Installers.	Wood Stoves/ Fireplaces.
(2) Require 20% Wood Moisture Limit for Wood Retailers.	
(3) Prohibit Trash and Coal Burning in Wood Stoves.	
(4) Set 20% Opacity Limit for Wood Burning.	
(1) Voluntary Wood Burning Ban During Periods of Poor Air Quality.	Wood Stoves/ Fireplaces.
(2) Mandatory Wood Burning Ban when NAAQS Violation Expected.	

The regulations' primary measures will result in the eventual phasing out of all non-EPA-certified wood stoves and wood burning fireplaces. This will be accomplished by replacing non-certified appliances with certified wood stoves, pellet stoves, or gas log fireplaces before the resale of a dwelling. In addition to phasing out non-certified appliances, the Town will rely on a mandatory wood burning curtailment. This mandatory curtailment program will initially exempt certified wood stoves, but may include all wood burning if more reductions are needed to attain the standard.

Road dust reduction measures include vacuum street sweeping, reduction measures for vehicle miles travelled (VMT) for new developments, and an overall limit of VMT in the Town of Mammoth.

Section 6 of the MLPA SIP revision and Appendix F set forth the selected control measures and expected emissions reductions. The controls are evaluated for two cases; Case A, a wood burning dominated day, and Case B, a road dust and cinder dominated day. Section 5 of the SIP revision shows that Case B, the road dust and cinder dominated day will require the most stringent controls. The control strategy, therefore, was selected for Case B conditions. An additional analysis to confirm the adequacy of the strategy is included in Appendix H.

Many of the proposed control measures are interrelated, so that reduction credits are not simple independent calculations. The SIP also includes contingency measures such as an accelerated replacement schedule for non-certified wood stoves and wood burning fireplaces. However, as noted in footnote #1, contingency measures will not be addressed in today's action. Appendix I shows the effectiveness calculations for the regulations, including the interrelationships of the measures, and the potential impacts of the contingency measures. These calculations are best summarized in Appendix I, pages I–21 and I–22.

By this document, EPA approves the control strategy.

5. RACT

The General Preamble states that generally EPA recommends that available control technology be applied to those existing sources in the nonattainment area that are reasonable to control in light of the attainment needs of the area and the feasibility of such controls. The Mammoth Lakes Planning Area contains no major point sources of PM_{10}, and the imposition of available control technology on other existing sources would not expedite attainment; therefore, implementation of available control technology (RACT) is not reasonably required in this plan (57 FR 13543). A more detailed discussion of the control strategy in the SIP revision can be found in the Technical Support Document (TSD).

6. Demonstration

As noted, the initial moderate PM_{10} nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994. Alternatively, the state must show that attainment by December 31, 1994 is impracticable. See section 189(a)(1)(B) of the Act.

In order for a state to properly demonstrate attainment of the NAAQS, the SIP control strategy must provide for attainment of each primary ambient air quality standard. There are two primary air quality standards for PM_{10}, a 24-hour standard (150 $\mu g/m^3$), and an annual standard (50 $\mu g/m^3$). The 24-hour standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$ is equal to or less than one. The annual standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 $\mu g/m^3$ (lid). See 40 CFR 50.6.

In the MLPA, peak PM_{10} concentrations are directly related to the influx of visitors to the area during peak periods of the ski season, coupled with low wind speeds. Increased particulate air pollution and stagnant air conditions lead to air pollution episodes with violations of the 150$\mu g/m^3$ 24-hour standard that may last several days or more. The MLPA has not violated the 50 $\mu g/m3$ annual average standard. California used receptor modeling coupled with a proportional rollback model for its MLPA air quality analysis. This analysis indicates that the 24 hour standard for PM_{10} can be attained by December 31, 1994. The SIP's design value for the 24 hour PM10 NAAQS is

210 μg/m³, 40 percent greater than the standard. The control strategy used to achieve attainment concentrations is summarized in the section of this notice entitled ''Control Strategy .''

By this notice EPA approves the State's demonstration of attainment of the PM_{10} NAAQS by December 31, 1994. For a more detailed description of the demonstration of attainment, see the TSD accompanying this notice.

7. PM_{10} Precursors

The control requirements which are applicable to major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors, unless EPA determines such sources do not contribute significantly to PM_{10} levels in excess of the NAAQS in that area. See section 189(e) of the Act. An analysis of air quality and emissions data for the MLPA indicates that exceedances of the NAAQS are attributable chiefly to direct particulate matter emissions from re-entrained road dust and cinders and residential woodburning. Sources of particulate matter precursor emissions of ammonium sulfate and ammonium nitrate contribute a negligible percentage of the total annual emissions of PM_{10}. Consequently, EPA finds that sources of precursors of PM_{10} in the MLPA do not contribute significantly to PM_{10} levels in excess of the NAAQS. The consequence of this finding is to exclude these sources from the applicability of PM_{10} moderate nonattainment area control requirements. Further discussion of the analyses and supporting rationale for EPA's finding are contained in the TSD accompanying this notice. Note that while EPA is making a general finding for this area, today's finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area. EPA intends to issue future guidance addressing such potential changes in the significance of precursor emissions in an area.

8. Enforceability

The particular control measures contained in the SIP revision for the MLPA are addressed above under the section entitled ''Control Strategy.'' These control measures apply to the types of PM_{10} emission sources identified in that discussion, predominantly road dust and cinders and residential wood burning.

All measures and other elements in the SIP must be enforceable by EPA and the State. See sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556. The EPA criteria addressing the enforceability of SIPs and SIP revisions are stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. See 57 FR 13541. The TSD for this notice contains detailed information on enforceability requirements including applicability, the source types subject to the rules, compliance schedules as appropriate, and reporting and recordkeeping requirements.

In addition to meeting the enforceability requirements of the Act and EPA guidance, nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP. See sections 110(a)(2)(C) and 172(c)(7). Moreover, where the State relies on a local or regional government agency for implementing any plan provision, the State has the responsibility for ensuring adequate implementation of that provision. See section 110(a)(2)(E)(iii).

The State of California has a program that will ensure that the measures contained in the SIP revision are adequately enforced. Primary enforcement of the RACM rules will be under the jurisdiction of the Great Basin Unified APCD and the Town of Mammoth Lakes.

Under section 110(a)(2)(E)(iii) of the Act, the State must also provide necessary assurances that the State has responsibility for ensuring adequate implementation of these plan provisions. The State has the authority to take legal action against the District if the State determines that the District is not carrying out its enforcement responsibilities.

III. Implications of Today's Action

EPA approves the moderate nonattainment area PM_{10} plan revision submitted to EPA for the Mammoth Lakes Planning Area on September 11, 1991, and amended on January 9, 1992. The State of California has demonstrated that the MLPA can practicably attain the PM_{10} NAAQS by December 31, 1994.

As noted, additional submittals for the initial moderate PM_{10} nonattainment areas were due at later dates. EPA will determine the adequacy of any such submittal as appropriate.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective August 23, 1996 unless by July 24, 1996, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent final rule that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on August 23, 1996.

IV. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410 (a)(2).

V. Unfunded Mandates Reform Act

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal Mandate that may result in estimated costs of $100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

Through submission of the state implementation plan or plan revisions

approved in this action, the State and any affected local governments have elected to adopt the program provided for under Title I and sections 110, 172, 189, and 190 of the Clean Air Act. The rules and commitments approved in this action may bind state and local governments to perform certain actions and also may ultimately lead to the private sector being required to perform certain duties. To the extent that the rules and commitments being approved by this action will impose or lead to the imposition of any mandate upon the state or local governments either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State or local governments, or to the private sector, result from this action. Therefore, EPA has determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to the State or local governments in the aggregate or to the private sector.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 31, 1996.

Felicia Marcus,

Regional Administrator.

Subpart F of part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (226) and (228) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

* * * * *

(226) Air Quality Management Plan for the following APCD was submitted on September 11, 1991, by the Governor's designee.

(i) Incorporation by reference.

(A) Great Basin Unified Air Pollution Control District.

(*1*) Air Quality Management Plan for the Mammoth Lakes PM–10 Planning Area adopted December 12, 1990.

* * * * *

(228) Air Quality Management Plans for the following APCD were submitted on January 9, 1992, by the Governor's designee.

(i) Incorporation by reference.

(A) Great Basin Unified Air Pollution Control District.

(*1*) Revisions to the Air Quality Management Plan for Mammoth Lakes PM–10 Planning Area adopted November 6, 1991.

(*i*) Rule 431 adopted November 6, 1991.

(*ii*) Town of Mammoth Lakes Municipal Code Chapter 8.30 dated October 2, 1991.

[FR Doc. 96–15905 Filed 6–21–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 271

[FRL–5510–9]

Nevada: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of Nevada has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. The Environmental Protection Agency (EPA) has completed its review of Nevada's application and has made a decision, subject to public review and comment, that Nevada's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Nevada's hazardous waste program revisions. Nevada's application for program revision is available for public review and comment.

DATES: Final authorization for Nevada is effective August 23, 1996. Unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Nevada's program revision application must be received by the close of business July 24, 1996.

ADDRESSES: Copies of Nevada's program revision application is available during the business hours of 9:00 a.m. to 5:00 p.m. at the following addresses for inspection and copying:

Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, 333 W. Nye Lane, Carson City, NV 89710 Phone: 702/687–5872, Contact L. H. Dodgion, Administrator

U.S. EPA Region IX Library-Information Center, 75 Hawthorne Street, San Francisco, CA 94105 Phone: 415/744–1510.

Written comments should be sent to Lisa McClain-Vanderpool, U.S. EPA Region IX (H–4), 75 Hawthorne Street, San Francisco, CA 94105 Phone: 415/744–2086.

FOR FURTHER INFORMATION CONTACT: Lisa McClain-Vanderpool , U.S. EPA Region IX (H–4), 75 Hawthorne Street, San Francisco, CA 94105 Phone: 415/744–2086.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act (''RCRA'' or ''the Act''), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260–266, 268, 124, 270 and 279.

B. Nevada

Nevada initially received final authorization for the base program on November 1, 1985. On June 12, 1995, Nevada received final authorization for revisions to its hazardous waste program, which included substantially all the Federal RCRA implementing regulations published in the Federal Register through July 1, 1994. On March 28, 1996, Nevada submitted an application for additional revision approvals. Nevada is seeking approval of its program revisions in accordance with 40 CFR 271.21.

EPA has reviewed Nevada's application, and has made an immediate final decision that Nevada's hazardous

waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to approve final authorization for Nevada's hazardous waste program revisions. The public may submit written comments on EPA's immediate final decision up until July 24, 1996. Copies of Nevada's applications for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of Nevada's program revisions is effective in 60 days unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to the comment which either affirms that the immediate final decision takes effect or reverses the decision.

Nevada is applying for authorization for changes and additions to the Federal RCRA implementing regualtions that occurred between July 1, 1994 and July 1, 1995, including the following Federal hazardous waste regulations:

Federal requirement	State analog
Recovered oil exclusion; (59 *FR* 38536, July 28, 1994)	Nevada Revised Statutes (NRS) 459.485 and 459.490; Nevada Administrative Code (NAC) 444.8632 through 444.8634 and regulations included as Section 4 of LCB File No. R027–95.
Removal of the conditional exemption for certain slag residues; (59 *FR* 43496, August 24, 1994)	Same as above.
Universal treatment standards and treatment standards for organic toxicity characteristic wastes and newly listed wastes; (59 *FR* 47982, September 19, 1994).	Same as above.
Organic air emission standards for tanks, surface impoundments, and containers; amendment; (59 *FR* 62896, December 6, 1994 and 60 *FR* 26828, May 19, 1995).	Same as above.
Hazardous Waste Management System; Testing and monitoring activities amendment I; (60 *FR* 3089, January 13, 1995).	Same as above.
Carbamate production identification and listing of hazardous waste; (60 *FR* 7824, February 9, 1995)	Same as above.
Hazardous Waste Management System; Testing and monitoring activities amendment II; (60 *FR* 17001, April 4, 1995).	Same as above.
Universal Waste Rule; (60 *FR* 25492, May 11, 1995) Removal of legally obsolete rules; (60 *FR* 33912, June 29, 1995).	Same as above.

NOTE: NRS 459.485 effective 1981, amended 1991; NRS 459.490 effective 1981, amended 1987. NAC 444.8632 adopts by reference 40 CFR part 2, subpart A; part 124, subparts A and B; parts 260 through 270, inclusive; part 273 and part 279 as modified by NAC 444.8633, NAC 444.8634, 444.86325 and the regulations included as Section 4 of LCB file no. R027–95 (filed with the Secretary of State on November 9, 1995).

Nevada agrees to review all State hazardous waste permits which have been issued under State law prior to the effective date of this authorization. Nevada agrees to then modify or revoke and reissue such permits as necessary to require compliance with the amended State program. The modifications or revocation and reissuance will be scheduled in the annual State Grant Work Plan.

Nevada is not being authorized to operate any portion of the hazardous waste program on Indian lands.

C. Decision

I conclude that Nevada's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Nevada is granted final authorization to operate its hazardous waste program as revised.

Nevada is now responsible for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984) (''HSWA''). Nevada also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 USC 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Nevada's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental Protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: May 20, 1996.

Felicia Marcus,

Regional Administrator.

[FR Doc. 96–13986 Filed 6–21–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 417, 431, 473, and 498

[BPD–704–FC]

Medicare and Medicaid Programs; Provider Appeals: Technical Amendments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This rule amends the HCFA regulations pertaining to appeals procedures available to providers and suppliers dissatisfied with determinations that affect their participation in Medicare or Medicaid.

These are technical amendments that simplify, clarify, and update existing rules without substantive change.

DATES: Effective date: July 24, 1996.

Comment date: August 23, 1996.

ADDRESSES: Please mail written comments (an original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–704–FC, P.O. Box 26676, Baltimore, MD 21207,

If you prefer, you may deliver your comments (original and three copies) to either of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201

Room C5–09–26 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–704–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of the document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Luisa V. Iglesias, (202) 690–6383.

SUPPLEMENTARY INFORMATION:

A. Background

Part 498 of the HCFA regulations sets forth the rules for administrative and judicial review of Federal determinations that affect participation in Medicare and, in some instances, in Medicaid. Part 431 of those regulations sets forth the appeals procedures for State determinations that affect participation in Medicaid.

A final rule identified as HSQ–156–F (Survey, Certification, and Enforcement for Skilled Nursing Facilities and Nursing Facilities), published on November 10, 1994 (59 FR 56116) amended both of those parts. The changes made by HSQ–156–F implement statutory amendments which provide that, for long-term care facilities with deficiencies, the State must establish remedies to be imposed in lieu of, or in addition to, termination of the facility's provider agreement.

B. Provisions of This Rule

This rule makes the following technical and editorial changes:

1. Makes nomenclature changes throughout chapter IV to reflect the fact that review of a hearing decision is now the responsibility of the Departmental Appeals Board, not the Appeals Council.

2. Simplifies and clarifies §§ 431.151 and 431.153 of the Medicaid appeals regulations, primarily by putting related content together and by providing descriptive headings for more paragraphs and paragraph subdivisions.

3. Updates § 498.1 (Statutory basis) to conform to changes in the applicable statutory provisions (for example, section 1866(h) rather than 1869(c), and section 1128A instead of previously specified subsections of section 1866(b)(2)). This requires removal of paragraph (e). Paragraph (f) is removed because there have been changes in delegations of authority and, since those changes are likely to continue, it is not possible to ensure that the paragraph could always be kept up to date.

4. Amends § 498.2 (Definitions) to substitute a definition of ''Departmental Appeals Board'' for the definition of ''Appeals Council'', make the conforming nomenclature changes, and amend the definition of ''provider'' to remove reference to ''a nursing facility (NF) or intermediate care facility for the mentally retarded (ICF/MR)''. These Medicaid providers are not subject to all part 498 provisions and are appropriately covered in the Medicaid rules and as indicated under items 6 and 7, below.

5. Expands § 498.3 (Scope and applicability) to identify and give the location of other rules that make the part 498 provisions applicable to certain determinations that do not affect participation in Medicare.

6. Amends § 498.5 (Appeal rights) to specify the appeal rights of NFs.

7. Amends §§ 498.60 (Conduct of hearing) and 498.61 (Evidence) to make clear that limits on the scope of review in appeals from civil money penalties affect the conduct of the hearing.

8. Amends § 498.74 (Administrative Law Judge's decision) to make the nomenclature changes and to specify that, for civil money penalties, judicial review must be sought in a United States Court of Appeals (rather than in a United States District Court, as is the case for other alternative sanctions).

9. Revises § 498.90 (Effect of Departmental Appeals Board decision) to simplify and clarify the policy. This requires reorganization and moving recently added content to a more appropriate location, the section on appeal rights, specifically current paragraph (c) and new paragraph (k) of § 498.5.

C. Waiver of Proposed Rulemaking

The changes made by this rule are technical and editorial in nature. They simplify, clarify, and update certain existing regulations without substantive change. They have no impact on program costs.

Accordingly, we find that prior notice and opportunity for public comment are unnecessary and contrary to the public interest, and that, therefore, there is good cause to waive proposed rulemaking procedures.

However, as previously indicated, we will consider timely comments from anyone who believes that, in making the technical and editorial changes, we have unintentionally altered the substance. Although we cannot respond to comments individually, if we change these rules as a result of comments, we will discuss all timely comments in the preamble to the revised rules.

D. Paperwork Reduction Act

This rule contains no information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

E. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) and section 1102(b) of the Social Security Act, we prepare a regulatory flexibility analysis for each regulation unless we can certify that the particular regulation will not have a significant economic impact on a substantial number of small entities, or a significant impact on the operation of a substantial number of small rural hospitals.

The RFA defines ''small entity'' as a small business, a nonprofit enterprise, or a governmental jurisdiction (such as

a county, city, or township) with a population of less than 50,000. We also consider all providers and suppliers of services to be small entities. For purposes of section 1102(b) of the Act, we define small rural hospital as a hospital that has fewer than 50 beds, and is not located in a Metropolitan Statistical Area.

We have not prepared a regulatory flexibility analysis because we have determined, and we certify, that this rule will not have a significant impact on a substantial number of small entities or a significant impact on the operation of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this rule was not reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and record keeping requirements, Rural areas, X-rays

42 CFR Part 417

Administrative practice and procedure, Grant programs—health, Health care, Health facilities Health insurance, Health maintenance organizations(HMOs), Loan programs—health, Medicare, Reporting and record keeping requirements.

42 CFR Part 431

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 473

Administrative practice and procedure, Health care, Health professions, Peer review organizations,(PROs), Reporting and record keeping requirements.

42 CFR Part 498

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Chapter IV is amended as set forth below.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Part 405, subpart G is amended as set forth below.

1. The authority citation for subpart G is revised to read as follows:

Authority: Secs. 1102, 1155, 1869(b), 1871, 1872, and 1879 of the Social Security Act (42 U.S.C. 1302, 1320c–4, 1395ff(b), 1395hh, 1395ii, and 1395pp).

§§ 405.718a, 405.718c, 405.718e, 405.724, 405.730, 405.750 [Amended]

2. In the following sections, ''Appeals Council'' is revised to read ''Departmental Appeals Board'' each time it appears: §§ 405.718 introductory text, 405.718a(b)(4), 405.718c(a)(2)(ii), 405.718e, 405.724, 405.730, and 405.750 heading and paragraph (b) introductory text.

B. Part 405, subpart H is amended as set forth below.

1. The authority citation for subpart H continues to read as follows:

Authority: Secs 1102, 1842(b)(3)(C), 1869(b), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395u(b)(3)(C), 1395ff(b), and 1395hh).

§ 405.815 [Amended]

2. In § 405.815, ''Appeals Council'' is revised to read ''Departmental Appeals Board''.

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

C. Part 417 is amended as set forth below.

1. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), Title XIII of the Public Health Service Act (42 U.S.C. 300e through 300e–17), and 31 U.S.C. 9701, unless otherwise noted.

§§ 417.634, 417.636, 417.638, 417.830, 417.840 [Amended]

2. In the following sections, ''Appeals Council'' is revised to read ''Departmental Appeals Board'': §§ 417.634 heading and text, 417.636 paragraphs (a)(1), and (b) heading and introductory text, 417.638, 417.830, and 417.840.

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

D. Part 431 is amended as set forth below.

1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 431.151 [Revised]

2. Section 431.151 is revised to read as follows:

Subpart D—Appeals Process

§ 431.151 Scope and applicability.

(a) *General rules.* This subpart sets forth the appeals procedures that a State must make available as follows:

(1) To a nursing facility (NF) that is dissatisfied with a State's finding of noncompliance that has resulted in one of the following adverse actions:

(i) Denial or termination of its provider agreement.

(ii) Imposition of a civil money penalty or other alternative remedy.

(2) To an intermediate care facility for the mentally retarded (ICF/MR) that is dissatisfied with a State's finding of noncompliance that has resulted in the denial, termination, or nonrenewal of its provider agreement.

(b) *Special rules.* This subpart also sets forth the special rules that apply in particular circumstances, the limitations on the grounds for appeal, and the scope of review during a hearing.

§ 431.152 [Amended]

3. In § 431.152, ''§§ 431.153 through 431.154'' is revised to read ''§§ 431.153 and 431.154''.

4. Section 431.153 is revised to read as follows:

§ 431.153 Evidentiary hearing.

(a) *Right to hearing.* Except as provided in paragraph (b) of this section, and subject to the provisions of paragraphs (c) through (j) of this section, the State must give the facility a full evidentiary hearing for any of the actions specified in § 431.151.

(b) *Limit on grounds for appeal.* The following are not subject to appeal:

(1) The choice of sanction or remedy.

(2) The State monitoring remedy.

(3) The loss of approval for a nurse-aide training program.

(4) The level of noncompliance found by a State except when a favorable final administrative review decision would affect the range of civil money penalty amounts the State could collect.

(c) *Notice of deficiencies and impending remedies.* The State must give the facility a written notice that includes:

(1) The basis for the decision; and

(2) A statement of the deficiencies on which the decision was based.

(d) *Request for hearing.* The facility or its legal representative or other authorized official must file written request for hearing within 60 days of receipt of the notice of adverse action.

(e) *Special rules: Denial, termination or nonrenewal of provider agreement.* (1) *Appeal by an ICF/MR.* If an ICF/MR requests a hearing on denial, termination, or nonrenewal of its provider agreement—

(i) The evidentiary hearing must be completed either before, or within 120 days after, the effective date of the adverse action; and

(ii) If the hearing is made available only after the effective date of the

action, the State must, before that date, offer the ICF/MR an informal reconsideration that meets the requirements of § 431.154.

(2) *Appeal by an NF.* If an NF requests a hearing on the denial or termination of its provider agreement, the request does not delay the adverse action and the hearing need not be completed before the effective date of the action.

(f) *Special rules: Imposition of remedies.* If a State imposes a civil money penalty or other remedies on an NF, the following rules apply:

(1) *Basic rule.* Except as provided in paragraph (f)(2) of this section (and notwithstanding any provision of State law), the State must impose all remedies timely on the NF, even if the NF requests a hearing.

(2) *Exception.* The State may not collect a civil money penalty until after the 60-day period for request of hearing has elapsed or, if the NF requests a hearing, until issuance of a final administrative decision that supports imposition of the penalty.

(g) *Special rules: Dually participating facilities.* If an NF is also participating or seeking to participate in Medicare as an SNF, and the basis for the State's denial or termination of participation in Medicaid is also a basis for denial or termination of participation in Medicare, the State must advise the facility that—

(1) The appeals procedures specified for Medicare facilities in part 498 of this chapter apply; and

(2) A final decision entered under the Medicare appeals procedures is binding for both programs.

(h) *Special rules: Adverse action by HCFA.* If HCFA finds that an NF is not in substantial compliance and either terminates the NF's Medicaid provider agreement or imposes alternative remedies on the NF (because HCFA's findings and proposed remedies prevail over those of the State in accordance with § 488.452 of this chapter), the NF is entitled only to the appeals procedures set forth in part 498 of this chapter, instead of the procedures specified in this subpart.

(i) *Required elements of hearing.* The hearing must include at least the following:

(1) Opportunity for the facility—

(i) To appear before an impartial decision-maker to refute the finding of noncompliance on which the adverse action was based;

(ii) To be represented by counsel or other representative; and

(iii) To be heard directly or through its representative, to call witnesses, and to present documentary evidence.

(2) A written decision by the impartial decision-maker, setting forth the reasons for the decision and the evidence on which the decision is based.

(j) *Limits on scope of review: Civil money penalty cases.* In civil money penalty cases—

(1) The State's finding as to a NF's level of noncompliance must be upheld unless it is clearly erroneous; and

(2) The scope of review is as set forth in § 488.438(e) of this chapter.

§ 431.154 [Amended]

5. In § 431.154, the following changes are made:

a. Paragraph (a) and the designation ''(b)'' are removed.

b. Paragraphs (b)(1), (b)(2), and (b)(3) are redesignated as paragraphs (a), (b), and (c), respectively.

PART 473—RECONSIDERATIONS AND APPEALS

E. Part 473 is amended as set forth below.

1. The authority citation for part 473 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§§ 473.22, 473.46, 473.48 [Amended]

2. In the following sections, ''Appeals Council'' is revised to read ''Departmental Appeals Board'' each time it appears: §§ 473.22(b)(5), 473.46 heading and paragraphs (a) and (b), 473.48 paragraphs (b) heading and text, and (c).

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN MEDICARE AND FOR DETERMINATIONS THAT AFFECT PARTICIPATION OF ICFs/MR AND CERTAIN NFs IN MEDICAID

F. Part 498 is amended as set forth below.

1. The authority citation for part 498 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Nomenclature change.

a. In the following locations, ''Appeals Council'' is revised to read ''Departmental Appeals Board'' wherever it appears:

498.10(b).
498.15.
498.17 heading and paragraph (a).
498.44 paragraphs (a), (b), and (c).
498.45(c)(2).
498.71(b).
498.76 heading.
Subpart E heading.
498.80 heading and text.
498.82 heading and paragraphs (a)(1) and (a)(2).
498.83 heading and paragraphs (a) and (c).
498.85 heading and text.
498.86 (a).
498.88 heading and paragraph (a).
498.95(a).
Subpart F heading.
498.100 paragraphs (a), (b)(1), and (b)(2).
498.102 paragraphs (a) introductory text, and (b)(1), and (b)(2).
498.103 paragraphs (a), (b)(1), and (b)(2) heading.

b. In the following locations, ''Council'' is revised to read ''Board'' wherever it appears:

498.17 paragraph (b)(1).
498.76 paragraphs (a) and (c).
498.82 paragraph (a)(2).
498.83 paragraph (b) introductory text and paragraphs (b)(4) and (d).
498.86 paragraphs (a), (b), and (d).
498.88 paragraphs (a) through (e) and paragraph (f) introductory text and (f)(1)(i).
498.95 paragraphs (a) through (c).
498.100 heading and paragraph (a).
498.102 paragraph (a)(2)(ii).
498.103 paragraphs (a) and (b)(2).

c. In § 498.88(f)(1) introductory text and (f)(2), and in § 498.95(a), ''Council's'' is revised to read ''Board's''.

d. In § 498.17(b)(2), ''council'' is revised to read ''Board''.

§ 498.1 [Amended]

3. In § 498.1, the following changes are made:

a. In paragraph (a), ''1869(c)'' is revised to read ''1866(h)''.

b. In paragraph (c), ''section'' is revised to read ''sections'', the period is removed, and ''and section 1128(f) provides for hearing and judicial review for exclusions.'' is added at the end.

c. Paragraphs (e) and (f) are removed and reserved.

d. Paragraphs (g) and (h) are revised, and paragraphs (i), (j) and (k) are added, to read as set forth below.

§ 498.1 Statutory basis.

* * * * *

(g) Although § 1866(h) of the Act is silent regarding appeal rights for suppliers and practitioners, the rules in this part include procedures for review of determinations that affect those two groups.

(h) Section 1128A(c)(2) of the Act provides that the Secretary may not collect a civil money penalty until the affected entity has had notice and opportunity for a hearing.

(i) Section 1819(h) of the Act—

(l) Provides that, for SNFs found to be out of compliance with the

requirements for participation, specified remedies may be imposed instead of, or in addition to, termination of the facility's Medicare provider agreement; and

(2) Makes certain provisions of section 1128A of the Act applicable to civil money penalties imposed on SNFs.

(j) Section 1891(e) of the Act provides that, for home health agencies (HHAs) found to be out of compliance with the conditions of participation, specified remedies may be imposed instead of, or in addition to, termination of the HHA's Medicare provider agreement.

(k) Section 1891(f) of the Act—

(1) Requires the Secretary to develop a range of such remedies; and

(2) Makes certain provisions of section 1128A of the Act applicable to civil money penalties imposed on HHAs.

§ 498.2 [Amended]

4. In § 498.2, the following changes are made:

a. The definition of ''Appeals Council'' is removed.

b. A definition of ''Departmental Appeals Board'' is added, in alphabetical order, to read as set forth below.

c. In the definition of ''provider'', the words ''a nursing facility (NF) or intermediate care facility for the mentally retarded (ICF/MR)'' are removed.

§ 498.2 Definitions.

* * * * *

Departmental Appeals Board or Board means a Board established in the Office of the Secretary to provide impartial review of disputed decisions made by the operating components of the Department.

* * * * *

5. In § 498.3, the introductory text of paragraph (b) is republished; paragraphs (a), (b)(4), (b)(7), (b)(8), (b)(12), (b)(13), (d) introductory text and (d)(1) are revised, paragraphs (d)(10) through (d)(12) are redesignated as paragraphs (d)(10)(i) through (d)(10)(iii), newly designated paragraph (d)(10) is revised, a new paragraph (d)(11) is added, and paragraphs (d)(13) and (d)(14) are redesignated as paragraphs (d)(12) and (d)(13) respectively, to read as follows:

§ 498.3 Scope and applicability.

(a) *Scope.* (1) This part sets forth procedures for reviewing initial determinations that HCFA makes with respect to the matters specified in paragraph (b) of this section and that the OIG makes with respect to the matters specified in paragraph (c) of this section.

(2) The determinations listed in this section affect participation in the Medicare program. Many of the procedures of this part also apply to other determinations that do not affect participation in Medicare. Examples are:

(i) HCFA's determination to terminate an NF's Medicaid provider agreement;

(ii) HCFA's determination to cancel the approval of an intermediate care facility for the mentally retarded (ICF/MR) under section 1910(b) of the Act; and

(iii) HCFA's determination, under the Clinical Laboratory Improvement Act (CLIA), to impose alternative sanctions or to suspend, limit, or revoke the certificate of a laboratory even though it does not participate in Medicare.

(3) The following parts of this chapter specify the applicability of the provisions of this part 498 to sanctions or remedies imposed on the indicated entities:

(i) Part 431, subpart D—for nursing facilities (NFs).

(ii) Part 488, subpart E (§ 488.330(e)—for SNFs and NFs.

(iii) Part 493, subpart R (§ 493.1844)—for laboratories.

(b) *Initial determinations by HCFA.* HCFA makes initial determinations with respect to the following matters:

* * * * *

(4) Whether a prospective supplier meets the conditions for coverage of its services as those conditions are set forth elsewhere in this chapter.

* * * * *

(7) The termination of a provider agreement in accordance with § 489.53 of this chapter, or the termination of a rural health clinic agreement in accordance with § 405.2404 of this chapter, or the termination of a Federally qualified health center agreement in accordance with § 405.2436 of this chapter.

(8) HCFA's cancellation, under section 1910(b) of the Act, of an ICF/MR's approval to participate in Medicaid.

* * * * *

(12) With respect to an SNF or NF, a finding of noncompliance that results in the imposition of a remedy specified in § 488.406 of this chapter, except the State monitoring remedy, and the loss of the approval for a nurse-aide training program.

(13) The level of noncompliance found by HCFA in an SNF or NF but only if a successful challenge on this issue would affect the range of civil money penalty amounts that HCFA could collect. (The scope of review during a hearing on imposition of a civil money penalty is set forth in § 488.438(e) of this chapter.)

* * * * *

(d) *Administrative actions that are not initial determinations.* Administrative actions that are not initial determinations include but are not limited to the following:

(1) The finding that a provider or supplier determined to be in compliance with the conditions or requirements for participation or for coverage has deficiencies.

* * * * *

(10) With respect to an SNF or NF–

(i) The finding that the SNF's or NF's deficiencies pose immediate jeopardy to the health or safety of its residents;

(ii) Except as provided in paragraph (b)(13) of this section, a determination by HCFA as to the facility's level of noncompliance; and

(iii) The imposition of State monitoring or the loss of the approval for a nurse-aide training program.

(11) The choice of alternative sanction or remedy to be imposed on a provider or supplier.

* * * * *

6. Section 498.5 is amended to revise paragraph (c) and to add a new paragraph (k), to read as follows:

§ 498.5 Appeal rights.

* * * * *

(c) *Appeal rights of providers and prospective providers.* Any provider or prospective provider dissatisfied with a hearing decision may request Departmental Appeals Board review, and has a right to seek judicial review of the Board's decision.

* * * * *

(k) *Appeal rights of NFs.* Under the circumstances specified in § 431.153 (g) and (h) of this chapter, an NF has a right to a hearing before an ALJ, to request Board review of the hearing decision, and to seek judicial review of the Board's decision.

7. Section 498.60 is amended to add a new paragraph (c), to read as follows:

§ 498.60 Conduct of hearing.

* * * * *

(c) *Scope of review: Civil money penalty.* In civil money penalty cases—

(1) The scope of review is as specified in § 488.438(e) of this chapter; and

(2) HCFA's determination as to the level of noncompliance of an SNF or NF must be upheld unless it is clearly erroneous.

§ 498.61 [Amended]

8. In § 498.61, the designation ''(a)'' and paragraph (b) are removed.

§ 498.74 [Amended]

9. In § 498.74, the following changes are made:

a. In paragraph (b)(1), ''within the stated time period'' is revised to read ''within the time period specified in § 498.82''.

b. In paragraphs (b)(1), (b)(2), and (b)(3), ''Appeals Council'' is revised to read ''Departmental Appeals Board'' in paragraphs (b)(1) and (b)(4), ''Council'' revised to read ''Board'',

c. In paragraph (b)(2), ''in a Federal district court;'' is revised to read ''in a United States District Court or, in the case of a civil money penalty, in a United States Court of Appeals;''.

10. Section 498.90 is revised to read as follows:

§ 498.90 Effect of Departmental Appeals Board Decision

(a) *General rule.* The Board's decision is binding unless—

(1) The affected party has a right to judicial review and timely files a civil action in a United States District Court or, in the case of a civil money penalty, in a United States Court of Appeals; or

(2) The Board reopens and revises its decision in accordance with § 498.102.

(b) *Right to judicial review.* Section 498.5 specifies the circumstances under which an affected party has a right to seek judicial review.

(c) *Special rules: Civil money penalty.*

(1) *Finality of Board's decision.* When HCFA imposes a civil money penalty, notice of the Board's decision (or denial of review) is the final administrative action that initiates the 60-day period for seeking judicial review.

(2) *Timing for collection of civil money penalty.* For SNFs and NFs, the rules that apply are those set forth in subpart F of part 488 of this chapter.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance; Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: May 16, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 96–13521 Filed 6–21–96; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2920

[WO–350–1430–00–24 1A; Circular No. 2661]

RIN 1004–AB51

Leases, Permits, and Easements; Effective Dates of Permit Decisions; Appeal Procedure

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the general lease and permit regulations of the Bureau of Land Management (BLM). It provides that BLM general use, occupancy, and development permit decisions will take effect immediately if the contemplated uses meet the requirements for minimum impact permits under the existing regulations. Permits issued under such decisions will remain in effect during the pendency of any appeal to the Interior Board of Land Appeals (IBLA), unless IBLA stays the decision. The regulatory text in the rule pertains only to minimum impact permits. If a proposed use does not satisfy the requirements for a minimum impact permit under the existing regulations (that is, if the proposed use would conflict with BLM plans, policies, and programs for the affected lands, or local zoning ordinances, or cause appreciable damage to public lands or resources or improvements), the requested permit would not qualify as a minimum impact permit and the provision adopted today would not apply. In such a case, BLM would not issue a permit until the applicant meets all the requirements contained in the existing regulations. Appeals of permits other than minimum impact permits are not affected by this final rule. Similarly, appeals of BLM lease decisions are not affected by this rule. These appeals of BLM decisions to issue leases and non-minimum impact permits will continue to be governed by the general appeal procedures of the Department of the Interior, and the use authorizations appealed will not take immediate effect under this rule. The amendments to the appeals process in this final rule are needed to avoid delays in BLM's issuance of permits for environmentally benign public land uses.

EFFECTIVE DATE: July 24, 1996.

ADDRESSES: You may send inquiries or suggestions to: Director (350), Bureau of Land Management, 1849 C Street, NW, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Vanessa Engle, as to the permit program, (202) 452–7776, or Jeff Holdren, as to the rule or the permit program, (202) 452–7779.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary of the Bureau of Land Management Permit Program

The existing regulations in 43 CFR part 2920 contain procedures for many types of land users to obtain authorizations in the form of permits, leases, and easements to use, occupy, and develop public lands and their resources. BLM's statutory authority to allow these uses is found in Section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732) (FLPMA). BLM's general authority for issuing regulations is found in Section 310 of FLPMA (43 U.S.C. 1740). This final rule relates only to permits issued for uses causing minimal environmental impacts on lands and resources, and does not pertain to leases, easements, or other permits.

BLM authorizes only those uses that conform to applicable law, and to BLM plans, policies, objectives, and resource management programs. Permits are normally issued for short-term uses that do not exceed 3 years. (Uses with terms shorter than 3 years but involving heavier impacts may require leases.) Permits are required for activities that disrupt normal visitor activity or other authorized uses, or involve the placement, storage, or use of temporary structures or facilities, or materials or equipment. BLM may terminate a permit immediately for noncompliance, or to allow another disposition or use of the lands. Typical uses requiring permits under these regulations are equipment storage, beekeeping, motion picture and advertising photography, and scientific research. The regulations in part 2920 do not cover specific activities governed by other regulations in this title, such as grazing (43 CFR part 4100), mining (parts 3700 and 3800), mineral leasing (parts 3100, 3200, 3400, and 3500), mineral material sales (part 3600), and timber sales (part 5400). Also, certain activities require no authorization, such as still photography not intended for advertising purposes. There is no need to apply for a permit or lease for such activities.

Section 2920.2–2 authorizes the issuance of permits for activities that cause no appreciable impacts on the public lands, their resources or

improvements. If a proposed use qualifies for a minimum impact permit under section 2920.2–2, BLM is not required to publish a notice of realty action under section 2920.4.

B. Proposed Rules

The final rule published today is a stage of a rulemaking process that will culminate in the comprehensive revision of the lease and permit regulations in 43 CFR part 2920. The rule published today addresses only the effective date of minimum impact land use permits. This rule was preceded by publication of two proposed rules, the first proposing to revise the entire part 2920, and the second proposing to amend the part by adding new provisions or changing previously proposed provisions.

The first proposed rule was published in the Federal Register on November 21, 1990 (55 FR 48810). This proposed rule was intended to streamline the land use approval process by removing a category of authorizations (easements) and cumbersome administrative procedures. The BLM invited public comments for 60 days, and received comments from 16 sources: 10 from offices of Federal agencies, 2 from business entities, 1 from an association, and 3 from State government agencies.

After the public comment period closed, a controversy arose concerning issuance of filming permits. Some parties expressed concerns about potential environmental degradation related to commercial activities, particularly permits for feature films. Other parties, primarily filmmakers and those who provide services to them, including State and local government agencies, objected to provisions that allow delay when parties file administrative appeals of film permits.

The BLM published a further proposed rule in the Federal Register on February 9, 1995 (60 FR 7878), which was intended to allow more expeditious processing and issuance of permits. It also would have provided for immediate implementation of certain types of permits. The further proposed rule designated two categories of permits: ''minimum impact permits'' and ''full permits.'' ''Minimum impact permits'' were to be issued for activities having a minimal impact on the public lands and their resources. These permits were to become effective immediately upon execution by the BLM authorized officer and were not to be subject to the general stay process in 43 CFR 4.21(a). ''Full permit'' decisions (and also lease issuance decisions) would have remained subject to the 43 CFR 4.21 stay provisions. The further proposed rule contained a set of criteria for determining when a full permit would be required.

The BLM sought public response in the further proposed rule to specific questions relating to permits and rental schedules. Only the first question related to appeals, and is discussed below. The remaining questions will be discussed when the final rule revising part 2920 is published. The first question read as follows:

1. Under the existing regulations, all permits and leases are subject to a 30-day appeal period before they become effective. The 1990 proposed rule would make all leases and permits effective immediately upon issuance by the BLM authorized officer. Under the 1995 further proposed rule, only minimum impact permits would be effective immediately; leases and other permits would remain subject to the 30-day waiting period prescribed in 43 CFR part 4. Which approach do you think is appropriate?

The overwhelming public response to this question urged that all permits and leases be effective immediately. This final rule adopts this recommendation only as to the minimum impact permits provided for in section 2920.2–2 of the regulations in the 1995 and earlier editions of 43 CFR. General land use leases, and permits with more than minimal effects, will remain subject to 43 CFR 4.21.

In the further proposed rule, BLM also invited public comment on several other provisions that were not in the original proposed rule. The further proposed rule would have added rental and fee schedules for commercial filming and photography, and would have addressed hazardous materials, outdoor advertising, criminal penalties, and conforming applications to land use planning. The BLM will resolve these issues in its forthcoming final rule revising part 2920.

The BLM received approximately 800 comments on the further proposed rule from the filming and photography industries, State and local government agencies, individuals and environmental organizations. The great majority of the public comments opposed the further proposed rule as overly complex, specific, and burdensome.

II. Final Rule and Response to Comments

New section 2920.0–9

This section explains the information collection requirements contained in part 2920, and is added in the final rule to comply with the publication requirements of the Code of Federal Regulations. The material in this section appeared in the 1995 and earlier editions of 43 CFR as a ''Note'' at the beginning of Group 2900, and in the preamble to the original proposed rule published on November 21, 1990. This material must appear in the regulation text.

Amended section 2920.2–2 Minimum impact permits.

New paragraph 2920.2–2(b) is added to cover appeals of minimum impact permit decisions. Appeals were provided for in subpart 2924 in the 1990 proposed rule. In the further proposed rule, part 2920 was reorganized so that section 2921.8 pertained to appeals. Designation of the appeals section in the rule adopted today is dictated by the organization of part 2920 as presently constituted. Existing section 2920.2 is an umbrella heading addressing public-initiated land use proposals. Existing section 2920.2–2 allows the issuance of minimum impact permits in appropriate circumstances. New paragraph 2920.2–2(b) covers appeals of decisions on these permits and makes it clear that its provisions pertain only to minimum impact permits issued under section 2920.2–2. This final rule does not affect appeals of penalties for unauthorized use and appeals of determinations that land use proposals do not conform to approved land use plans. New paragraph 2920.2–2(b) may be renumbered and amended when a comprehensive final rule revising part 2920 is published.

The final rule published today provides that all BLM permit decisions made under section 2920.2–2 will be effective immediately and remain in effect during the time allowed for filing an administrative appeal to the IBLA. Section 2920.2–2 applies only to land uses that have minimum impacts on the public lands and resources. To meet this standard, the use must be in conformance with BLM resource management plans or other plans for the particular lands affected, and with BLM policies and programs. The use must also conform with local zoning ordinances and all other legal requirements, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). The permitted use must not cause appreciable damage or disturbance to public lands, their resources or improvements. The BLM will not grant a permit under section 2920.2–2 if the permit proposal fails to meet any one of these requirements.

Lease applications, and permit proposals that do not meet the minimum impact standards stated in section 2920.2–2, are not effective immediately upon issuance. For example, if BLM finds that the proposed

use does not conform to resource management plans, or local zoning, BLM does not authorize the use until the procedures contained in the remainder of part 2920 have been followed and until the applicant meets its requirements.

Based on its recent experience in administering the film permit program, the BLM expects that the great majority of permits issued under part 2920 will meet the standards set forth in section 2920.2–2, and that problems arising during the consideration of these permits will be resolved by consultation among BLM, the applicant, and other interested persons. In some instances, a person may wish to appeal and seek a stay of BLM's decision to issue a permit under section 2920.2–2 until the appeal is resolved. When the appeal is filed, the procedures in 43 CFR 4.21(b) will be applicable. However, the permit issued will remain in effect until IBLA grants a stay.

Most respondents addressing the date a permit would become effective in the further proposed rule wanted all permits to be made effective immediately and to remain in effect while an administrative appeal is pending. Respondents emphasized the need to rely on the discretion of local BLM managers to gather data and make an informed decision, while complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), and other environmental laws. As stated earlier, BLM anticipates that, under the final rule, most permits will meet the requirements for minimum impact permits in section 2920.2–2(a), and will be issued in full force and effect under section 2920.2–2(b).

One respondent suggested that the rule should provide appellants the option of petitioning the State Director for a stay, before appealing to IBLA, to allow a more expeditious remedy. The BLM has not adopted this suggestion in the final rule because it would create an unnecessarily cumbersome and burdensome bureaucratic step in the permit appeal process.

Finally, an editorial amendment is made in section 2920.2–2 as it appeared in the 1995 and earlier editions of 43 CFR. This section is redesignated as paragraph (a) in the rule published today. Because ''permit'' is defined as an authorization in section 2920.0–5, the word ''authorization'' in the phrase ''permit for a land use authorization'' is redundant and has been removed in this final rule.

III. Procedural Matters

The principal author of this final rule is Jeff Holdren of the Use Authorization Team, BLM, Washington, DC.

The BLM has determined in an environmental analysis that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The rule merely simplifies and streamlines the permit process for uses found to have minimum environmental impact. Under this rule, all applications for permits or leases remain subject to environmental analysis, and if an environmental impact statement is necessary, minimum impact permits will not be issued.

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866.

The rule will have little effect on costs or prices for consumers, nor will there be a need for increasing Federal, State, or local agency budget or personnel requirements. By promulgating regulations that merely streamline the permit issuance process, the rule will result in little or no change in revenue for the United States, although improved efficiency should reduce administrative costs. Any revenue changes realized would not have a measurable impact on the economy and would not approach $100 million annually. The rule will have no other expected economic effects and contain no increased costs to the United States or users of the public lands.

For the same reasons, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the rule will not have a significant economic impact on a substantial number of small entities. The rule favors no demographic group, and imposes no direct or indirect costs on small entities. It merely expedites the process of issuing permits.

Because the rule will result in no taking of private property and no impairment of property rights, the Department certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights, as required by Executive Order 12630.

BLM has determined that this rule is not significant under the Unfunded Mandates Reform Act of 1995, because it will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, as stated above.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*.

List of Subjects in 43 CFR Part 2920

Public lands, Reporting and recordkeeping requirements.

Dated: June 5, 1996.

Sylvia V. Baca,

Acting Assistant Secretary of the Interior.

Under the authority of Sections 102, 302, 303, 304, and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1732, 1733, 1734 and 1740) part 2920, Group 2900, Subchapter B, Chapter II of the Code of Federal Regulations, is amended as follows:

PART 2920—LEASES, PERMITS AND EASEMENTS

1. The Note at the beginning of Group 2900 is removed.

2. The authority citation for part 2920 is revised to read as follows:

Authority: 43 U.S.C. 1740.

3. Section 2920.0–9 is added to read as follows:

§ 2920.0–9 Information collection.

(a) The information collection requirements contained in Part 2920 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1004–0009. The BLM will use the information in considering land use proposals and applications. You must respond to obtain a benefit under Section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732).

(b) Public reporting burden for this information is estimated to average 7.43 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Bureau of Land Management (DW–101), Building 50, Denver Federal Center, P.O. Box 25047, Denver, Colorado 80225, and to the Office of Management and Budget, Paperwork Reduction Project, 1004–0009, Washington, D.C. 20503.

4. Section 2920.2–2 is amended by redesignating the existing text as

paragraph (a), by removing the word ''authorization'' from paragraph (a), and by adding paragraph (b) to read as follows:

§ 2920.2–2 Minimum impact permits.

* * * * *

(b) Permit decisions made under paragraph (a) of this section take effect immediately upon execution, and remain in effect during the period of time specified in the decision to issue the permit. Any person whose interest is adversely affected by a decision to grant or deny a permit under paragraph (a) of this section may appeal to the Board of Land Appeals under part 4 of this title. However, decisions and permits issued under paragraph (a) of this section will remain in effect until stayed.

[FR Doc. 96–15994 Filed 6–21–96; 8:45 am]
BILLING CODE 4310–84–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Parts 27 and 28

Transportation for Individuals With Disabilities—Correction of Organizational References

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department of Transportation proposes to amend its rules to reflect a statutory change in the name of the Department's transit agency from the Urban Mass Transportation Administration (UMTA) to the Federal Transit Administration (FTA).

EFFECTIVE DATE: This rule is effective July 24, 1996.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590. (202) 366–9306 (voice); (202)755–7687(TDD).

SUPPLEMENTARY INFORMATION: In his Regulatory Reinvention Initiative Memorandum of March 4, 1995, President Clinton directed Federal agencies to conduct a page-by-page review of all their regulations and to ''eliminate or revise those that are outdated or otherwise in need of reform.'' In response to that directive, the Department has undertaken a review of its regulations as contained in 49 CFR Parts 27 and 28. This rule is a result of those efforts. Pursuant to the name change mandated by Title III—Federal Transit Act Amendments of 1991, of the Intermodal Surface Transportation Efficiency Act of 1991 (P.L. 102–240), the words ''Urban Mass Transportation Administration'' are changed to the words ''Federal Transit Administration'' in every instance in which those words appear; and the letters ''UMTA'' are changed to the letters ''FTA'' in every instance in which those letters appear.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). Because this rule is editorial in nature, it involves no costs and no economic evaluation has been prepared.

In accordance with the Regulatory Flexibility Act, the Department has evaluated the effects of this action on small entities. Based upon this evaluation, the Department certifies that the amendment will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism)

These amendments have been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The Department has determined that the amendments do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The amendments will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

National Environmental Policy Act

The Department has also analyzed the amendments for the purpose of the National Environmental Policy Act. The amendments will not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

There are no reporting or recordkeeping requirements associated with the amendments.

Notice and Opportunity for Public Comment Unnecessary

Under the Administrative Procedure Act (5 U.S.C. section 553), the Department determines that notice and an opportunity for public comment are unnecessary and contrary to the public interest. The amendments made in this document are ministerial and will have no substantive impact.

List of Subjects

49 CFR Part 27

Administrative practice and procedure, Airports, Civil rights, Highways and roads, Individuals with disabilities, Mass transit, Railroads, Reports and recordkeeping requirements.

49 CFR Part 28

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities, Mass transit, Railroads, Reports and recordkeeping requirements.

PART 27—[AMENDED]

1. The authority citation for Part 27 is revised to read as follows:

Authority: Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); secs. 16(a) and 16(d) of the Federal Transit Laws (49 U.S.C. Chapter 5301 *et seq.*); sec. 165(b) of the Federal-aid Highway Act of 1973 (49 U.S.C. 142nt.); the Americans with Disabilities Act of 1990 (42 U.S.C. 12101–12213; and 49 U.S.C. 322).

§ 27.5 Definitions [Amended]

2. In the definition of ''Head of Operating Administration'' in § 27.5, remove the words ''Urban Mass Transportation Administration,'' and in their place, add the words ''Federal Transit Administration''.

§ 27.19 Compliance with Americans with Disabilities Act requirements and FTA policy—[Amended]

3. The heading of § 27.19 is revised to read as set forth above.

4. In § 27.19(b), remove the word ''UMTA,'' and add, in its place, the word ''FTA''; remove the words ''Urban Mass Transportation Administration,'' and add, in their place, the words ''Federal Transit Administration.''

PART 28—[AMENDED]

5. The authority citation for Part 28 continues to read as follows:

Authority: 29 U.S.C. 794.

§ 28.103 Definitions [Amended]

6. In § 28.103, paragraph (g) of the difinition of ''Departmental Element'', remove the words ''Urban Mass Transportation Administration (UMTA),'' and in their place, add the words ''Federal Transit Administration (FTA).''

Issued on Washington, DC, on May 31, 1996.

Federico Peña,

Secretary of Transportation.

[FR Doc. 96–14246 Filed 6–21–96; 8:45 am]

BILLING CODE 4910–62–P

Surface Transportation Board

49 CFR Parts 1002 and 1150

[STB Ex Parte No. 529]

Class Exemption for Acquisition Or Operation Of Rail Lines By Class III Rail Carriers Under 49 U.S.C. 10902

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: Pursuant to the request by the Regional Railroads of America and The American Short Line Railroad Association, the Surface Transportation Board (Board) grants final approval for a class exemption for the acquisition or operation of additional rail lines by Class III rail carriers. Final regulations establishing the exemption for the acquisitions are set forth below.

EFFECTIVE DATE: July 24, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Pursuant to the request by the Regional Railroads of America and The American Short Line Railroad Association, the Board proposed a new class exemption to apply to transactions in which Class III rail carriers acquire or operate additional rail properties under 49 U.S.C. 10902. By notice of proposed rulemaking served and published in the Federal Register on March 22, 1996 (61 FR 11802–11804), the Board requested comments on the proposed exemption. Upon reviewing the comments, the Board is adopting the proposed class exemption, with minor editorial changes, because it meets the exemption criteria of 49 U.S.C. 10502. The class exemption will be similar to the Board's existing rules for noncarrier transactions under 49 U.S.C. 10901. Because section 10902 precludes the Board from imposing labor protection on Class III carriers receiving a certificate under the statute, the class exemption will not provide labor protection for affected rail employees. Additional information is contained in the Board's decision served on June 21, 1996. To purchase a copy of the decision, write to, call, or pick up in person from: DC News & Data, Inc., 1201 Constitution Avenue, N.W., Room 2229, Washington, D.C. 20423. [Assistance for the hearing impaired is available through TDD service (202) 927–5721.]

List of Subjects

49 CFR Part 1002

Administrative practice and procedure, Freedom of information, User fees.

49 CFR Part 1150

Administrative practice and procedure, Railroads.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen. Chairman Morgan commented with a separate expression. Commissioner Owen concurred in part and dissented in part with a separate expression.

Decided: June 14, 1996.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, the Board amends title 49, chapter X, parts 1002 and 1150 of the Code of Federal Regulations, as follows:

PART 1002—FEES

1. The authority citation for part 1002 is revised to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701; and 49 U.S.C. 721(a).

2. Section 1002.2 is amended by adding a new paragraph (f) (36) to read as follows:

§ 1002.2 Filing fees.

* * * * *

(f) * * *

Type of proceeding	Fee
* * * * *	
(36) Notice of exemption under 49 CFR 1150.41–1150.45	$950
* * * * *	

* * * * *

PART 1150—CERTIFICATE TO CONSTRUCT, ACQUIRE, OR OPERATE RAILROAD LINES

3. The authority citation for part 1150 is revised to read as follows:

Authority: 5 U.S.C. 553 and 559; 49 U.S.C. 721(a), 10502, 10901, and 10902.

4. The heading for Subpart D is revised to read as follows:

Subpart D—Exempt Transactions Under 49 U.S.C. 10901

5. A new Subpart E, consisting of §§ 1150.41–1150.45, is added to read as follows:

Subpart E—Exempt Transactions Under 49 U.S.C. 10902 for Class III Rail Carriers

Sec.

Subpart E—Exempt Transactions Under 49 U.S.C. 10902 for Class III Rail Carriers

§ 1150.41 Scope of exemption.

Except as indicated in paragraphs (a) through (d) of this section, this exemption applies to acquisitions or operations by Class III rail carriers under section 10902. This exemption also includes:

(a) Acquisition by a Class III rail carrier of rail property that would be operated by a third party;

(b) Operation by a Class III carrier of rail property acquired by a third party;

(c) A change in operators on such a line; and

(d) Acquisition of incidental trackage rights. Incidental trackage rights include the grant of trackage rights by the seller, or the acquisition of trackage rights to operate over the line of a third party, that occurs at the time of the purchase.

§ 1150.42 Procedures and relevant dates for small line acquisitions.

(a) This exemption applies to the acquisition of rail lines with projected annual revenues which, together with the acquiring carrier's projected annual revenue, do not exceed the annual revenue of a Class III railroad. To qualify for this exemption, the Class III rail carrier applicant must file a verified notice providing details about the transaction, and a brief caption summary, conforming to the format in § 1150.44, for publication in the Federal Register. In addition to the written submission, the notice and summary must be submitted on a 3.5-inch diskette formatted for WordPerfect 5.1.

(b) The exemption will be effective 7 days after the notice is filed. The Board, through the Director of the Office of Proceedings, will publish a notice in the Federal Register within 30 days of the filing. A change in operators must follow the provisions at § 1150.44, and notice must be given to shippers.

(c) If the notice contains false or misleading information, the exemption is void *ab initio*. A petition to revoke

under 49 U.S.C. 10502(d) does not automatically stay the exemption.

(d) Applicant must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, is achieved.

§ 1150.43 Information to be contained in notice for small line acquisitions.

(a) The full name and address of the Class III rail carrier applicant;

(b) The name, address, and telephone number of the representative of the applicant who should receive correspondence;

(c) A statement that an agreement has been reached or details about when an agreement will be reached;

(d) The operator of the property;

(e) A brief summary of the proposed transaction, including:

(1) The name and address of the railroad transferring the subject property to the Class III rail carrier applicant;

(2) The proposed time schedule for consummation of the transaction;

(3) The mileposts of the subject property, including any branch lines; and

(4) The total route miles being acquired;

(f) A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and states; and

(g) A certificate that applicant's projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier so as to require processing under § 1150.45.

§ 1150.44 Caption summary.

The caption summary must be in the following form. The information symbolized by numbers is identified in the key as follows:

Surface Transportation Board; Notice of Exemption; STB Finance Docket No. (1)—Exemption (2)–(3)

(1) Has filed a notice of exemption to (2) (3)'s line between (4). Comments must be filed with the Board and served on (5). (6).

Key to symbols:

(1) Name of carrier acquiring or operating the line.

(2) The type of transaction, e.g., to acquire or operate.

(3) The transferor.

(4) Describe the line.

(5) Petitioner's representative, address, and telephone number.

(6) Cross reference to other class exemptions being used.

The notice is filed under 49 CFR 1150.41. If the notice contains false or misleading information, the exemption is void *ab initio*. The filing of a petition to revoke will not automatically stay the transaction.

§ 1150.45 Procedures and relevant dates—transactions under section 10902 that involve creation of Class I or Class II rail carriers.

(a) To qualify for this exemption, applicant must serve a notice of intent to file a notice of exemption no later than 14 days before the notice of exemption is filed with the Board.

(b) The notice of intent must contain all the information required in § 1150.43 plus:

(1) A general statement of service intentions; and

(2) A general statement of labor impacts.

(c) The notice of intent must be served on:

(1) The Governor of each state in which track is to be sold;

(2) The state(s) Department of Transportation or equivalent agency;

(3) The national offices of the labor unions with employees on the affected line(s); and

(4) Shippers representing at least 50 percent of the volume of local traffic and traffic originating or terminating on the line(s) in the most recent 12 months for which data are available (beginning with the largest shipper and working down).

(d) Applicant must also file a verified notice of exemption conforming to the requirements of paragraph (b) of this section and of § 1150.44, and certify compliance with paragraphs (a), (b), and (c) of this section, attaching a copy of the notice of intent. In addition to the written submission, the notice must be submitted on a 3.5-inch diskette formatted for WordPerfect 5.1.

(e) The exemption will be effective 21 days after the notice is filed. The Board, through the Director of the Office of Proceedings, will publish a notice in the Federal Register within 30 days of the filing.

(f) If the notice contains false or misleading information, the exemption is void *ab initio*. A petition to revoke under 49 U.S.C. 10502(d) does not automatically stay the transaction. Stay petitions must be filed within 7 days of the filing of the notice of exemption. Replies will be due 7 days thereafter. To be considered, stay petitions must be timely served on the applicant.

(g) Applicant must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, is achieved.

[FR Doc. 96–15895 Filed 6–21–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018 AC30

Endangered and Threatened Wildlife and Plants; Reclassification of Saltwater Crocodile Population in Australia From Endangered to Threatened With Special Rule for the Saltwater and Nile Crocodiles

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The saltwater crocodile (*Crocodylus porosus*) in Australia is reclassified from endangered to threatened under the provisions of the U.S. Endangered Species Act (Act) of 1973. The saltwater crocodile had been listed as endangered throughout its range since 1979, except the Papua New Guinea population, which has never been listed. A special rule, included herein, allows for the importation into the United States of certain specimens of saltwater crocodiles from Australia and Nile crocodiles from those countries in which this latter species is listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Such imports must be consistent with the requirements of CITES and certain other provisions.

EFFECTIVE DATE: July 24, 1996. However, compliance with § 17.42(c)(3)(i)(A) is not required until July 24, 1997.

ADDRESSES: Comments, information, and questions should be submitted to the Chief, Office of Scientific Authority; room 725, Arlington Square; 4401 N. Fairfax Drive, U.S. Fish and Wildlife Service; Arlington, Virginia 22203. Fax number (703) 358–2276. Express and messenger delivered mail should be addressed to the Office of Scientific Authority; room 750, 4401 N. Fairfax Drive; Arlington, Virginia 22203. Comments and other information received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, Virginia address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address, or by phone at (703) 358–1708.

SUPPLEMENTARY INFORMATION:

Background

The saltwater or estuarine crocodile (*Crocodylus porosus*) ranges from southwest India and along its eastern

coast, throughout Southeast Asia and through the Pacific Islands as far east as Fiji and south to the northern coast of Australia. The majority of populations have been reported from the following countries: Australia, Bangladesh, Myanmar, Cambodia, India, Indonesia, Malaysia, Papua New Guinea, Sri Lanka, Thailand, the Philippines, and Vietnam. It is the largest crocodilian species, reaching lengths well over 20 feet (6.1 meters). The species inhabits estuaries, mangrove swamps, and tidal reaches of rivers (The World Conservation Union (IUCN) 1975).

At the 1979 meeting of the Parties to CITES, the saltwater crocodile was transferred from Appendix II to Appendix I, except for the population in Papua New Guinea which was retained on Appendix II. On December 16, 1979 (44 *FR* 75074), the U.S. Fish and Wildlife Service (Service) listed all saltwater crocodile populations outside of Papua New Guinea as endangered. Both of these actions were taken because the species had suffered serious losses of habitat throughout most of its range and it had been subject to extensive poaching for its hide. At their 1985 meeting, the CITES Parties voted to transfer the Australian population from Appendix I to Appendix II of CITES pursuant to resolution Conf. 3.15 (ranching). Under Australian law, the effect of this action was to allow trade in captive-bred specimens and specimens taken from approved crocodile farm operations based on controlled collecting of eggs or hatchlings or nuisance animals from the wild.

In June 1990, the Service received a petition from the Australian National Parks and Wildlife Service (ANPWS) requesting the reclassification of the captive (i.e., captive-bred and ranched) populations of saltwater crocodile in Australia from endangered to threatened. The petition contained information on the management of wild and captive populations, populations surveys, and legal status. The Service had previously reviewed almost the same information, which was considered substantial, and the Service was in the process of preparing a proposed rule based on the earlier information when the petition was received. On September 27, 1990, the Service, acting on this assessment but without issuing a formal finding on the petition, published a proposed rule (55 *FR* 39489) to reclassify the Australian population of the saltwater crocodile to threatened status.

The proposed rule included a special rule which would have allowed for the commercial import of parts and products of ranched saltwater crocodiles from Australia directly into the United States, or through a third party if that country was a CITES member, had not taken a reservation on saltwater crocodiles, had filed annual CITES trade reports, and the specimens were traded in accordance with Australian laws and CITES requirements. In the absence of a required universal tagging system for crocodilian skins, however, trade controls were considered insufficient to justify uncontrolled trade through third parties.

The Service delayed publication of the final rule to reclassify the Australian populations of the saltwater crocodile beyond the 12 months normally allowed because of concerns about allowing trade in products of one crocodilian species without adequate control of trade in other crocodilians and pending acceptance of universal tagging procedures for crocodilian skins in international trade. Resolution Conf. 8.14 adopted at the 1992 Meeting of the Conference of the Parties in Kyoto, Japan, established a new marking system that was to provide for strict regulation of trade in all crocodilian skins. This system was to have been effective after adoption of additional procedures by the CITES Animals Committee, with concurrence from the CITES Standing Committee. However, because the issues were too substantial to resolve at the committee level a revised resolution on universal tagging procedures was presented to the 1994 Meeting of the Conference of the Parties in Ft. Lauderdale, Florida. After further modification the Parties adopted this new resolution. The special rule presented in this notice is consistent with the newly adopted resolution.

Summary of Comments on Proposed Reclassification

Comment: African Resources Trust, Crocodile Farmers Association of Zimbabwe, the Crocodile Specialist Group of the World Conservation Union (IUCN), the Governments of Brazil, Paraguay, and Gambia, and Safari Club International supported the proposed reclassification of the Australian population of saltwater crocodile from endangered to threatened.

Response: The Service continues to believe that this reclassification is warranted.

Comment: Dr. Wayne King and IUCN believed that the Australian population had recovered sufficiently and was adequately protected so as to warrant removal from the list of Endangered and Threatened Wildlife Species.

Response: The Service notes that some portions of the Australian population of the saltwater crocodile may not have recovered and that other populations of the species remain endangered, and therefore, believes that threatened classification is appropriate.

Comment: The Environmental Centre N.T. Inc. (ECNT) believed the Australian population of the saltwater crocodile was relatively low, that population estimates were based on limited surveys, and that the annual State reports are not available to the public.

Response: The Service believes that the surveys are adequate to document the recovery of this population and that this population continues to increase as documented in the proposal presented to the ninth meeting of the CITES Parties.

Comment: The ECNT was concerned that the proposed reclassification would lead to an expanded crocodile trade industry, and that the Northern Territory government had too few staff to regulate commercial trade in crocodile specimens.

Response: The Service believes that the regulation and management by the Australian State and Federal governments is adequate to control crocodile trade and protect the wild population.

Comment: The ECNT stated that the claim that the provision for legal harvest provided an incentive for conservation was unsubstantiated and that the ranching and egg harvesting operation provided no demonstrable contribution to the conservation of the species.

Response: Regardless of whether a direct linkage between the harvest operation and conservation benefits to the species can be demonstrated, the Service believes the Australian population of saltwater crocodile has recovered sufficiently to warrant reclassification of the species.

Comment: The ECNT noted that only a small number of coastal or marine conservation reserves occur within the range of the saltwater crocodile in Australia.

Response: The Service believes that based on population increases and management programs that adequate habitat exists for the saltwater crocodile in Australia to warrant reclassification of the species.

Summary of Factors Affecting the Australian Population of Saltwater Crocodile

Section 4(a)(1) of the Act (16 U.S.C. 1531 et seq.) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth five factors to be used in determining whether to add, reclassify, or remove a species from the list of

endangered and threatened species. These factors and their applicability to populations of the saltwater crocodile in Australia are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The saltwater crocodile occupies a variety of tidal and non-tidal habitats across northern Australia from Maryborough on the Queensland east coast to Broome on the Western Australian west coast. The Northern Territory has more extensive areas of prime saltwater crocodile habitat than either Queensland or Western Australia (report from the ANPWS 1990, titled, ''Evidence in Support of a Petition by Australia to the U.S. Fish and Wildlife Service to Remove Captive Populations of the Saltwater Crocodile, *Crocodylus porosus*, in Australia from the Endangered Species List under the U.S. Endangered Species Act 1973''—copy on file with the Office of Scientific Authority). Exploitation of crocodiles in Australia began on a large scale in the late 1940's and extended into the early 1970's. During this time, populations in the rivers along the north coast were nearly extirpated with only small scattered populations remaining (King et al. 1979). Export of saltwater crocodiles and their parts from Australia was prohibited in 1972. Today, the habitats are largely intact across the whole of northern Australia, and the species occupies the whole of its known historical range within the country. The species is protected in the three states where it occurs (the Northern Territory, Queensland, and Western Australia). Management programs allowing limited utilization of wild stocks for crocodile farm operations have been implemented by the states in light of the crocodile's increasing population size.

According to the ANPWS (ANPWS 1990, op cit.), the Northern Territory population of saltwater crocodiles has undergone significant recovery since protection from hunting in 1972. Analysis of all available monitoring results from 1975 to 1987 shows that the density of wild saltwater crocodiles in tidal rivers has tripled since surveying began. In 1984, Webb et al. (1989) estimated the total Northern Territory population of the saltwater crocodile to be at least 40,000 individuals. Between 1984 and 1987, monitoring results indicated that the tidal population increased by 16.5 percent. Assuming that this rate of increase can be applied to the population as a whole, the minimum estimate for 1989 would be 46,000 crocodiles in the Northern Territory.

Extensive helicopter surveys across the entire range of habitat types present in Cape York Peninsula, Queensland, resulted in the sighting of some 2,400 crocodiles. Actual population numbers are likely to be considerably higher. It is not possible to derive an estimate of absolute numbers for Queensland, but sampling of potentially suitable habitats yielded an average density index of 0.77 crocodile/km of waterway. Surveys in 1977–78 resulted in a population estimate of about 2,000 crocodiles beyond the hatchling stage for Western Australia. The population was estimated at 2,500 crocodiles beyond the hatchling stage when it was resurveyed in 1986.

A proposal was submitted by Australia to the ninth meeting of the Conference of the Parties to CITES in Ft. Lauderdale in November 1994 to retain the Australian population of the saltwater crocodile in Appendix II pursuant to resolution Conf. 1.2 instead of resolution Conf. 3.15 under ranching provisions. The proposal reported that saltwater crocodile populations in the Northern Territories had increased by 50 percent since ranching was introduced in 1984, and that the 1993 population estimate ''scaled from the 1984 estimate'' of 40,000 was around 60,000 individuals. Furthermore, the Western Australia population of saltwater crocodiles was reported to be stable or increasing and estimated to be about 3,000 individuals excluding young of the year. The results of the 1987 survey in Queensland reportedly indicated a slow recovery from the 1979 population of 3,000 although the number in the populated and agricultural areas particularly along the east coast may still be decreasing.

2. *Over-utilization for commercial, recreational, scientific, or educational purposes.* Population estimates of saltwater crocodiles in Australia were not made prior to 1970. Over-exploitation for the skin trade and persecution as undesirable wildlife began in the late 1940's and did not subside until hunting was banned in 1972. The export of saltwater crocodiles and their parts from Australia was prohibited in 1972 by an amendment of the customs regulations. By that time, many accessible populations had become seriously threatened with extirpation. With the enactment of state and territorial protection laws [Wildlife Conservation and Control Ordinance (1962)—Northern Territory; the Fauna Conservation Act (1974)—Queensland; and the Wildlife Conservation Act (1950)—Western Australia], the populations showed an immediate response and have tripled in numbers since surveying began in the late 1970's (ANPWS 1990, op. cit.).

At the 1985 meeting of the Conference of the Parties to CITES, the Australian saltwater crocodile population was transferred from Appendix I to Appendix II, pursuant to resolution Conf. 3.15 on ranching. This provided for trade in saltwater crocodiles bred-in-captivity or raised on farms under approved management plans. The transfer was recommended by the Australian Council of Nature Conservation Ministers and IUCN Crocodile Specialist Group. The Australian CITES proposal to transfer the Australian population of saltwater crocodile to Appendix II to allow trade under the ranching provision was based on a series of experimental egg harvests and quantification of the impacts of those harvests. No discernible impact of this egg harvest has been detected on the number of crocodiles in subsequent age classes. Australia allows a regulated annual harvest of crocodile eggs for farm operations under approved management plans. The effects of the egg harvests are quantified and assessed through monitoring programs in the harvested areas. Approval to harvest eggs incorporates a commitment that if any decline in the wild population were to occur, a larger number of 1-year-old crocodiles would be returned to the wild than would have survived had no eggs or hatchlings been removed from the wild. In 1994, only the Northern Territory and Western Australia had approved management plans under which the harvest of eggs is allowed for ranching operations.

According to information provided by the Australian National Parks and Wildlife Service (ANPWS 1990, op. cit.), the capture and relocation of nuisance crocodiles can only be authorized by State and federal personnel.

In the Northern Territory, nuisance animals are caught alive and relocated to farms whenever practical. In other cases, they are destroyed by Northern Territory Conservation Commission personnel. In Western Australia, problem crocodiles are captured and removed, or where the level of risk to humans is unacceptable, permission to kill the crocodile may be given. In both States, those problem animals relocated to farms are individually marked and, if not required for captive breeding, are available for harvest after they have been maintained in captivity for a minimum of 30 days. In Queensland, nuisance animals may be removed to provide breeding stock for closed-cycle farms or destroyed where other options are not available.

Traditional harvest of crocodiles and crocodile eggs for food by Aborigines of the Northern Territory is allowed. However, the low level of traditional harvests is not considered a threat to the populations. Traditional use does not include commercial trade.

Ranched and captive-bred crocodile parts and products are exported from six establishments under an approved management program in the Northern Territory. A management program that would allow ranching operations in Western Australia has also been developed. Two farms in Queensland export products derived solely from captive-bred crocodiles.

The proposal submitted to the 1994 meeting of the CITES Parties reported that there were 6, 6, and 2 crocodile farms/ranches in the Northern Territory, Queensland, and Western Australia, respectively. Finally, it was noted that Queensland does not permit the capture of wild saltwater crocodiles for the purposes of stocking farms although a total of 181 problem crocodiles had been added to the farms between 1984 and 1994.The proposal was adopted by the CITES Parties.

3. *Disease or predation.* None known at this time.

4. *The inadequacy of existing regulatory mechanisms.* The saltwater crocodile is recognized as a valuable resource in Australia, where laws and regulations are in place to prevent over-exploitation of these animals. Since the ban on hunting in 1972, saltwater crocodile populations have substantially increased in numbers. State wildlife laws govern the take, possession, and trade in saltwater crocodiles. Also, the Commonwealth Wildlife Protection (Regulation of Exports and Imports) Act of 1982, administered by the Australian Nature Conservation Agency (ANCA, formerly ANPWS) helps to protect wildlife that might otherwise be threatened by unregulated export. Under this Act, export of saltwater crocodiles, their parts and products requires an export permit. Permits may be issued only for scientific purposes, or for specimens including products derived from captive-bred animals, or animals taken under an approved management program. Maximum penalties for violations of the Act are a AUS $100,000 fine and/or 5 years imprisonment for individuals, and AUS $200,000 for corporations. The substantial increase in maximum penalties for attempting to illegally export saltwater crocodile skins from Australia (from $1,000 up to $200,000) is considered to be an effective deterrent. In addition to legislation and policies regulating take within Australia, export of saltwater crocodiles is regulated by CITES, to which Australia is a party.

Regulation of take has been a factor in the continued improvement of Australia's saltwater crocodile populations in the wild. This significant improvement has prompted the Service to reclassify the saltwater crocodile in Australia from endangered to threatened.

5. *Other natural or manmade factors affecting its continued existence.* A comprehensive system of nature conservation reserves has been developed, so that approximately 40 million hectares of all habitats throughout Australia, or 5.5 percent of the total land surface, is reserved under different categories. Parks, reserves, and sanctuaries in northern Australia provide a mosaic of areas in which crocodiles and their habitats are protected. Significant areas of crocodile habitat are contained in at least six parks or nature reserves. In addition, nearly 37 million hectares are protected under various state and national marine and estuarine protected area categories.

The Cobourg Peninsula Marine National Park was declared in 1983 to protect, among other species, the saltwater crocodile.

The Service has carefully assessed the best biological and commercial information with respect to past, present, and future threats faced by the species in issuing this rule. Criteria for reclassification of a threatened or endangered species (50 CFR 424.ll (c) and (d)) are the same as for listing a species as endangered or threatened. The proposed action is to reclassify Australia's saltwater crocodile populations from endangered to threatened, based on continuing recovery of the species. A special rule amending 50 CFR 17.42 to allow for the importation of specimens into the United States under certain circumstances but without a threatened species permit is also established. This reclassification is based on substantial evidence that Australia's populations of the saltwater crocodile have made a remarkable recovery and are no longer in danger of extinction in the foreseeable future.

Surveys conducted in the late 1980's indicated populations of at least 50,000. Populations are estimated to have increased three-fold between 1975 and 1987. The species is protected in the three jurisdictions in which it occurs, and there are closely regulated crocodile farm operations. In light of increasing populations, Australia's strict regulation of harvest, and the requirement of a management program prior to approval of crocodile farm operations, several threats to the existence of the saltwater crocodile in Australia have been ameliorated. Therefore, the Service believes that reclassification to threatened best fits the current status of saltwater crocodile populations in Australia.

Other populations throughout the species' range are still in danger of extinction, to varying degrees, by taking. Penalties for illegal exports and enforcement activities will help ensure that illegal skins or products do not enter into commercial trade. Because crocodiles of the Australian population cannot be distinguished from saltwater crocodiles of other populations and from other endangered crocodilians once made into manufactured products, the Service is adopting a special rule to strengthen the implementation of the CITES skin-tagging program (see description presented later in this notice).

The reclassification to a threatened status and adoption of a special rule allowing commercial trade under certain conditions will not end trade controls for the species. The species remains on Appendix II of CITES with export permits required, and the special rule will require adherence to the CITES marking scheme for crocodilian skins, among other things discussed later in this document when provisions of the special rule are described. Trade in legally harvested saltwater crocodile skins, meat, and products, when controlled as specified in the special rule, will provide an incentive for conserving the species without posing significant risks to wild populations.

Proposed Classification of the Papua New Guinea Population

The Service had proposed the classification of the Papua New Guinea population of saltwater crocodile for reasons of similarity of appearance (59 FR 18652), because this population is the only saltwater crocodile population not listed under the Endangered Species Act, and such a listing would have imposed the same conditions on all legally traded saltwater crocodilian parts and products so as to better address concerns about commingling of legal and illegal specimens. However, such listing action is presently precluded by a listing moratorium imposed under U.S. legislation.

African Resources Trust and Crocodile Farmers Association of Zimbabwe had commented that such a listing appeared to be sensible. The Government of Papua New Guinea indicated that the crocodile population in Papua New Guinea was stable and a

transfer to Appendix I was not warranted. Such a transfer was not proposed, and if it were to occur would prohibit international trade for commercial purposes. In addition, Mainland Holdings Pty Ltd in Papua New Guinea commented that the saltwater crocodile population in Papua New Guinea was not endangered, that habitat would be left untouched if landowners can continue to realize cash income from the harvest of crocodiles, that recent surveys show that current regulations preserved habitat, that the trade was controlled by the Department of Wildlife and there was no evidence of any illegal trade in crocodile skins from Papua New Guinea, and that the proposed rule was likely to be detrimental to the crocodile industry in Papua New Guinea. This organization apparently did not understand that the proposed listing would not have precluded the sale of crocodile skins, other parts, and products from Papua New Guinea or the trade of these items through other countries that were properly implementing CITES. Furthermore, the provisions of the special rule should inhibit competitive trade in any illegal specimens from other countries.

The special rule will require tagging of crocodilian skins imported directly from Australia into the United States, and this will be expected under CITES resolution Conf. 9.22 for skins imported directly from Papua New Guinea. Implementation of CITES provisions and resolutions by Papua New Guinea has been effective. Furthermore, the special rule is intended to allow trade in saltwater crocodile parts and products through intermediary countries only if the countries involved in such trade are effectively implementing CITES. Intermediary countries likely to trade in crocodile specimens from Papua New Guinea are expected to be the same as those trading in specimens from Australia. Therefore effectively implementing the CITES tagging resolution. Therefore, the Service believes that the trade in crocodilian parts and products from Papua New Guinea can continue without listing that saltwater population as threatened by reason of similarity of appearance, but the Service will take special care to detect any illegal trade in skins from the saltwater crocodile population in Papua New Guinea.

Special Rule for Nile and Saltwater Crocodiles

1. History of Special Rule

The special rule established in 1987 (52 FR 23148) allowed for the import of skins and live animals into the United States direct from Zimbabwe under certain circumstances. In the September 27, 1990, Federal Register (55 *FR* 39489), the Service proposed a special rule along with the proposed reclassification of the Australian population of the saltwater crocodile. The special rule would have allowed the importation of skins and products into the United States from ranched saltwater crocodile populations in Australia, regardless of whether the imported products came directly from Australia or through an intermediary country. However, concerns were raised about the provision for commercial trade in products without adequate control of trade for all crocodilian skins.

In the August 3, 1992, Federal Register (57 FR 34095), the Service proposed a special rule along with the proposed reclassification of the Nile crocodile. Concerns were expressed about the feasibility of the requirement to relate original tag numbers for all pieces of skins in products that are re-exported, and for the need for a more effective system to control trade in raw skins. Furthermore, implementation of the CITES universal tagging system for crocodiles had been delayed. Therefore, the Service reclassified the Nile crocodile (58 FR 49870, September 23, 1993) without revising the existing special rule that related only to specimens from the Zimbabwean populations, and announced that it would develop a special rule designed to complement the CITES universal tagging system when finalized. Consequently, on April 19, 1994 (59 FR 18652), the Service reproposed a special rule for the Nile and saltwater crocodiles which accompanied the proposed reclassification and classification of the Australian population and Papua New Guinea population of the saltwater crocodile, respectively.

Summary of Comments Received on Proposed Special Rule

Comment: Columbia Impex Corporation stated that the special rule should conform with CITES.

Response: The Service has included in the special rule provisions of the CITES resolution on ''Universal Tagging System for the Identification of Crocodilian Skins'' (tagging resolution) adopted at the ninth meeting of the Conference of the Parties, as well as provisions that allow only those countries that are properly implementing CITES and its tagging resolutions to import skins and products into the United States.

Comment: The Government of Gambia supported the special rule as written.

Response: The Service has retained the basic concept of the special rule with regard to effective implementation of CITES, and implementation of the tagging resolution, and those essential provisions to address the commingling concerns.

Comment: Safari Club International (SCI) expressed concerns about the process of documentation.

Response: The Service has included CITES documentation requirements that are consistent with the provisions of the special rule, and in the case of crocodilian products and pieces of processed skins the Service has adopted provisions that complement CITES requirements and resolutions.

Comment: SCI expressed the concern that the country approval process will cause lengthy delays.

Response: The Service has established criteria which if not met would result in a Schedule III Notice of Information that may prohibit or restrict imports of crocodilian skins, other parts and products. Removal of the proposed requirement for information to be provided by the involved exporting and intermediary countries will also expedite appropriate actions when warranted.

Comment: SCI believed that requiring the country of origin to certify its compliance with various practices is contrary to the spirit of CITES.

Response: The Service does not agree that asking a country to certify its compliance with certain internal practices necessary for effective implementation of CITES is contrary to the spirit of CITES. Countries presently certify that resolution recommendations are met when issuing certificates or submitting registration proposals for bred-in-captivity and artificially propagated specimens.

Comment: SCI noted that the concerns about commingling of skins is not ''tied'' to the biological status of the species.

Response: The Service is concerned not only about commingling of skins of populations listed as threatened but also of skins of the same species listed as endangered pursuant to the Act and/or in CITES Appendix I.

Comment: SCI objected to the United States dictating controls to other countries.

Response: The Service has already noted that the provisions of the special rule complement the implementation practices adopted by CITES Parties and that any additional provisions are designed to clarify and support aspects of relevant CITES resolutions or

requirements. Furthermore, the United States has or will implement similar provisions in its internal regulations.

Comment: SCI noted that no tag appeared to be required for sport-hunted trophies imported directly from the country of origin.

Response: The Service, in implementing the CITES tagging resolution, will require tags on all crocodilian skins including trophies imported, exported, or re-exported from the United States and has repeated this requirement in the special rule.

Comment: SCI noted that in addition to allowing the import of sport-hunted trophies directly from the country of origin, the special rule should allow the import of trophies from intermediary countries provided that the tag from the country of origin is attached to the trophy or just accompanies the shipment.

Response: The Service recognizes that trophies may be shipped to third party countries for preparation by a taxidermist and acknowledges that this is a low volume activity. Therefore, the Service has modified the special rule to allow these trophy imports from third party countries provided the original export tag is attached to unmounted trophies or accompanies the mounted trophy and the re-export certificate contains the original tag and export permit number and date and re-export certificate number from the previous country of re-export.

Comment: Crocodile Farmers Association of Zimbabwe (CFAZ) and African Resources Trust noted that the requirement that all pieces of skin larger than 9 square inches must bear an intact tag was discussed in the description of the special rule but not in the proposed special rule.

Response: In the discussion of paragraph (c)(3)(iii) (F1–F3) in the ''Section-by-Section Description'' of the proposed special rule on page 18659 of the April 19, 1994, Federal Register notice, mention of 9 square inches was intended to refer only to tracking such pieces (separate or in products) and was not included as a tagging requirement for skin pieces. This situation in which skins may be imported, processed, and cut in one country prior to shipment to another country for manufacture is believed to involve a small percentage of the trade. In these situations, the tagging resolution calls for an administrative system effectively matching imports and re-exports. Uncut, unprocessed or processed whole or partial skins, flanks, bellies or backs should retain the original tag through the intermediary country(s) and on import into the United States, or should possess a re-export tag in a limited number of situations in which the original tag was lost in reprocessing but tracked through the administrative system. However, if the processed skins have been cut into pieces, in addition to the administrative tracking system, the Service believes that precise tracking of the more valuable larger pieces is significantly important to the proper control of trade in legal skins. Therefore, the Service will require that belly skin pieces wider than 35 centimeters will have the original tag number and permit number and the previous intermediary country's re-export certificate number, if any, recorded on the re-export certificate.

Comment: The Government of Paraguay, Dr. Wayne King, CFAZ, and the African Resources Trust stated that the tagging of pieces greater than 9 square inches involves unnecessary work.

Response: The Service agrees, and as noted in the previous response, the special rule has been revised.

Comment: IUCN and Dr. Wayne King believed that most countries would be unable to comply with provisions requiring the tracking of pieces larger than 9 square inches in finished products to the original tag and permit, and Dr. King suggested not requiring documentation for pieces comprising less than 25 percent of the product.

Response: The Service now believes that the burden imposed by the tracking of such small pieces is unnecessary if provisions of the tagging resolution for documenting tag and permit numbers are extended to point of manufacture. The tagging resolution requires an administrative system for effective matching of imports and re-exports of skins, and for skins being re-exported the tags should remain attached. To further enable the intermediary countries to detect commingling, the Service will require that the tags should remain attached to the point of manufacture. This along with some monitoring system for quantity of products produced should obviate the need for tracking the smaller pieces. The system suggested by IUCN and Dr. King for tracking pieces amounting to 25 percent of product could still result in tracking small pieces. However, the tracking of most valuable large pieces is still considered to be warranted, but precise tracking will only be required for belly skin pieces wider than 35 centimeters.

Comment: The Government of Paraguay, Dr. Wayne King, the African Resources Trust, CFAZ, and IUCN commented on the need to clarify the meaning ''physically inspects 40 percent of crocodilian skin and product shipments.'' IUCN also considered that the Service should not require an inspection rate higher than it conducts. In addition, the Australian Nature Conservation Agency felt that requiring a 40 percent inspection rate imposed an undue burden and noted that random inspections of shipments and processing facilities supported with severe penalties was a sufficient deterrent.

Response: The Service believes that its random inspection practices as well as its efforts to inspect 40 percent of the crocodilian skin or product shipments on importation constituted an effective enforcement level in the United States. However, the Service recognizes that an effective enforcement level involves a combination of inspection rates and severity of penalties. Therefore, the Service has not stated an inspection rate in the special rule but has relied on the importing, exporting and re-exporting countries to establish what they believe to be an effective level of enforcement.

Comment: The Government of Hong Kong thought that the special rule should be reconsidered after a revised tagging resolution was adopted at COP9.

Response: The Service agrees with this comment and has waited until the tagging resolution was revised and readopted by the CITES Parties to make the provisions of the resolution and this special rule consistent whenever possible.

Comment: CFAZ and African Resources Trust stated that if the listing of the Papua New Guinea population is contentious enough to hold up the special rule for Nile crocodile, they would request the special rule be uncoupled from the listing document.

Response: The delay in finalizing action on the special rule was due to waiting for the adoption of the tagging resolution by the CITES Parties, and the Service is now proceeding with the special rule without listing the Papua New Guinea population of the saltwater crocodile, presently prohibited by a listing moratorium enacted by U.S. legislation.

Comment: IUCN and Dr. Wayne King considered that the proposed 12-month delay in implementation was unwarranted.

Response: The 12-month delay referred to in paragraph (c)(3)(i)(A) was not intended to indicate when commercial shipments of skins would first be allowed into the United States, but to establish the date after which *untagged* skins and parts from intermediary countries would no longer be allowed into the United States. The Service has reviewed the wording of this provision in the special rule and

because the tagging resolution has been in effect for 1 year, the Service has made the tagging requirements effective on the effective date of this rule. However, because the specific parts tag requirements stipulated in this rule clarify the Service's perception of the intent of this requirement in the tagging resolution, the Service will not require the parts tag to be on containers until 1 year after the date of publication of this rule.

Similarly, the 12-month delay referred to in paragraph (c)(3)(ii)(A) was intended to establish the date after which commercial shipments of products must be accompanied by copies of CITES documents (or records of documents) from the country of origin. This delay has been deleted because the Service will follow the guidance on information to be included on permits and certificates as recommended in CITES resolution Conf. 9.3 as adopted at the ninth meeting of the Conference of the Parties in November 1994.

Comment: CFAZ and Africa Resources Trust noted that there are no details by which a country not originally approved or subsequently removed from the approved list can be included or reestablished on the approved list.

Response: The Service agrees that this was not addressed and has included a statement in the preamble portion of the rule which notes that any import prohibition or restriction established with a Schedule III Notice of Information will be lifted through a similar Notice of Information when conditions contributing to the prohibition or restriction have been corrected.

Comment: Jon Hutton (pers comm) noted that the preambular text of paragraph (c)(3)(iii) (F1–F3) in the proposed rule indicated that the provisions would apply to countries of origin and re-export but that the portion of the special rule omitted the country of re-export.

Response: The Service acknowledges this omission in the special rule paragraph but notes that it is clear from the specific requirements of this part of the proposed special rule that it applies to re-exporting countries. The special rule has been revised to state specifically that the provision for effective implementation of the tagging resolution applies to countries of origin and re-export.

Comment: The Australian Nature Conservation Agency expressed the view that random inspection of premises and records supported by severe penalties should be sufficient deterrent to obviate the need to track pieces of skin greater than 9 square inches.

Response: The Service generally agrees with this position and notes that it has eliminated the requirement for a specific inspection rate and has expected the other countries to determine effective enforcement practices which might involve higher inspection rates if penalties and/or ability to conduct random inspections do not provide an adequate deterrent. However, because of the monetary value of large, unmarred, raw or processed pieces, the Service is retaining a requirement for tracking belly skin pieces wider than 35 centimeters.

Comment: The Australian Nature Conservation Agency questioned how a ban by the CITES Parties or Standing Committee would be applied, e.g. how would a country be removed from the approved list?

Response: The Service has established bases for issuing Schedule III Notices of Information which would prohibit or restrict imports. If the Secretariat issues a notification of a ban based on a decision of the Parties or Standing Committee, the Service will publish a Schedule III Notice of Information. A similar Notice of Information to lift the prohibition or restriction will be published.

3. Description of Special Rule

The United States would allow import under certain conditions only of those skins, parts or products from designated populations of saltwater and Nile crocodiles. The special rule provides for import prohibitions or restrictions on exporting or re-exporting countries if (1) the country is listed in a Notification to the Parties by the CITES Secretariat as lacking designated Management and Scientific Authorities that issue CITES documents or their equivalent; (2) the country is identified in any action adopted by the Parties to the Convention, the Convention's Standing Committee, or in a Notification issued by the CITES Secretariat, whereby Parties are asked to not accept shipments of specimens of CITES-listed species from the country in question; or (3) the Service determines, based on information from the CITES Secretariat or other reliable sources that the country is not effectively implementing the tagging resolution. Whenever such evidence becomes available to the Service, the United States will inform the CITES Secretariat and the appropriate CITES Committee so that the CITES Parties collectively may also take appropriate actions.

The United States would also allow imports from non-CITES Parties if the country was in compliance with all of the expectations stated above for CITES Parties and if the country issued CITES-comparable permits/certificates and tags.

Importation of skin and other parts of saltwater crocodiles directly from Australia, or skins and parts of Nile crocodiles directly from countries with Appendix II populations would also be allowed under certain circumstances, if the country of origin implements provisions of the universal tagging system.

a. Marking. International trade in certain crocodilians has presented significant problems for the CITES Parties. Several resolutions have been adopted at previous meetings of the Parties in an effort to establish management regimes to benefit the conservation of the species. The United States, in conjunction with Australia, Italy, and Germany submitted a resolution to the CITES Secretariat that was adopted at the eighth meeting of the Conference of the Parties in Kyoto, Japan (March 2–13, 1992). This resolution (Conf. 8.14) called for a universal tagging system for the identification of crocodilian skins in international trade. Furthermore, in accordance with resolution Conf. 8.14, the CITES Animals Committee at its July 1992 and September 1993 meetings adopted resolutions recommending additional practices for tracking and monitoring tags. However, concurrence was not obtained from the CITES Standing Committee, and a new resolution was presented at the ninth meeting of the Conference of the Parties in Ft. Lauderdale, Florida (November 7–18, 1994). This resolution was further revised and then adopted at the November meeting.

Aspects of this resolution dealing with imports into the United States are incorporated into this special rule, and U.S. implementation of this resolution for import, export, and re-export for all crocodilian species will be incorporated into a future revision of 50 CFR part 23. Adherence to the new marking requirements should reduce the potential for substitution of illegal skins and reduce the trade control problems with similarity in appearance of skins and products among the different species of crocodilians.

Prior to implementation of the CITES universal tagging resolution certain taxa listed in Appendix II could be traded internationally without adequate assurance of their identification and/or legal status. The CITES resolution on the universal tagging system for the

identification of crocodilian skins requires, in part: (1) the universal tagging of raw and processed crocodilian skins with non-reusable tags for all crocodilian skins entering trade or being re-exported, unless substantial processing and manufacturing has taken place; (2) that such non-reusable tags include as a minimum the International Organization for Standardization two-letter code for the country of origin, a unique serial identification number, a species code and the year of production, and further that such non-reusable tags have as a minimum the following characteristics: a self-locking system, heat resistance, inertia to chemical and mechanical processing, information that has been applied by permanent stamping (tag manufacturers approved by each country's CITES Management Authority must be registered with the CITES Secretariat and meet certain conditions); (3) that the same information as is on the tags (for whole skins, flanks, bellies, and ''chalecos'') be given on the export permit, re-export certificate or other Convention document, or on a separate sheet which shall be considered an integral part of the permit, certificate or document and which should be validated by the same CITES-document issuing authority or by government authority designated by the CITES-document issuing authority (for the purposes of this rule this requirement applies to all uncut skins and pieces wider than 35 centimeters); (4) that each Party in which tags are applied maintain records accounting for tags and maintain records that relate each Convention document number to the tags of the crocodilian specimens traded thereunder and vice versa; (5) that Parties establish, where legally possible, a system of registration or licensing, or both, for importers and exporters of crocodilian skins and parts thereof; (6) that all countries permitting the re-export of raw, tanned, and/or finished crocodilian skins implement an administrative system for the effective matching of imports and re-exports; and (7) that tails, throats, feet, backstrips, and other parts be exported in transparent sealed containers clearly marked with a parts tag together with a description of the contents and total weight.

b. Special Rule. This special rule allows trade through intermediary countries, i.e., all countries of re-export by definition, for Nile and saltwater crocodiles as long as such countries are effectively implementing CITES and have adopted certain management measures to control trade in crocodilian skins and products. Countries are not considered as countries of re-export if the specimen remains in customs control while transiting or being transshipped through the country and the specimen has not entered into the commerce of that country. The special rule is intended to complement and strengthen the universal crocodilian tagging system as presently envisioned in the CITES universal tagging resolution.

The purpose of this special rule is to require a more accountable system for the transfer and processing of skins and products in the commercial crocodilian trade. The United States is a major importer of crocodilian products produced by other countries of re-export. The Service's inspections of importations have revealed a continuing pattern of commingling and misidentification of crocodilian leathers. Accompanying CITES documents have often declared the merchandise as American alligator when the product contains some species of crocodile, or as crocodile, when the goods are made from American alligator hide. The new CITES tagging system will represent a significant step towards eliminating misidentification of skins as they leave the country of origin. Since all American alligator skins are tagged upon export from the United States, the problems of commingling of alligator and crocodile clearly arise during the tanning and manufacturing process.

In addition, there are several species of crocodiles throughout Africa and Asia that remain listed as endangered. While identification of crocodile versus alligator can be made consistently in manufactured products, other species identification of crocodilian products is more difficult. Despite these difficulties, various species of endangered crocodilians have been identified in products declared as American alligator or non-endangered crocodiles.

Since the commingling problems described above principally arise in the re-exporting countries, this special rule is established with the expectation of adequate control through proper implementation and enforcement of CITES in the manufacturing countries to deter intermingling of the protected populations of the Nile and saltwater crocodiles, as well as the endangered populations of other crocodiles and alligators without imposing the overburdensome requirement of tracking each piece through the production process, and recording all incoming tag numbers on the re-exporting permit for products. However, the special rule provides for possible prohibition of imports from any re-exporting country that does not effectively control trade and adequately preclude commingling of illegal crocodilian skins and other parts.

Furthermore, this special rule is written to allow the Service to respond quickly to changing situations that may result in lessened protection to the crocodilians. Thus, the criteria described in the special rule establish bases for determining whether CITES provisions are being effectively implemented. Therefore, imports into the United States can be prohibited after publication of a Schedule III Notice of Information on any country that fails to comply with the requirements of the special rule. Such prohibitions/restrictions will be lifted through a similar Notice of Information when conditions contributing to the prohibition or restriction have been corrected. For those additional situations outside of the ones set forth in the special rule which involve a judgment as to whether necessary trade controls are being implemented, the Service will go through a separate proposed rule and comment process before reaching a final decision on any trade bans.

The special rule adopted herein will require the CITES-approved tags for all saltwater and Nile crocodile skins or appropriate tamperproof parts tags with CITES-required information on transparent sealed containers of crocodilian parts being imported into intermediary countries and CITES tags for all skins or significant pieces of skin being exported from any re-exporting country if the skins or products are eventually to be imported into the United States.

The special rule is designed to allow trade in saltwater and Nile crocodile skins and products from designated populations without the need to obtain a threatened species import permit. Tagged skins may be imported from the country of origin or any CITES-member country of re-export as long as the involved countries comply with certain criteria. Crocodilian products may be imported without individual tags, provided the involved countries comply with criteria described for products. The special rule expects compliance with the CITES universal tagging resolution including an administrative system for the effective matching of imports and re-exports of skins. In addition, the intermediary country will be expected to have adequate enforcement authorities to deter the commingling of illegal skins. If a country fails to meet the criteria in the special rule, a Schedule III Notice of Information to that effect will be published in the Federal Register, and skins and

products from Nile and saltwater crocodiles will not be able to be imported into the United States from that country without the threatened species import permits required in part 17.

4. Effects of the Special Rule

The degree of endangerment of the many crocodilian species varies by species and specific populations. Some crocodilian species and populations are listed on Appendix I of CITES, and the remaining species and populations are included in Appendix II. Some species are listed as threatened or endangered on the U.S. List of Endangered and Threatened Wildlife, while other species are not included. In addition, actions have been taken by several countries to protect their wild populations but allow trade in specimens bred or raised in captivity under appropriate management programs.

Thus, trade in specimens from some populations is not detrimental to the wild population, and commercial trade is allowed under CITES with proper export permits from certain countries of origin and re-exporting countries. The Service's concern has been that trade in non-endangered species has in the past provided the opportunity for specimens of the endangered or threatened species or populations to be commingled with legal trade, especially during the manufacturing process. Numerous U.S. law enforcement actions as well as past actions by the CITES Parties attest to this concern. The underlying premise behind this special rule is that under current management systems, the Appendix II populations of Nile crocodile with assigned export quotas and the Australian populations of saltwater crocodile are being sufficiently sustained to support controlled commercial use; the key risk to these populations, as well as other similar-appearing crocodilians, is inadequate controls in the countries of re-export, especially in those countries in which manufacturing occurs.

The CITES Parties have adopted and are in the process of implementing provisions of a universal tagging system for crocodilian skins, and the Service supports these efforts. Adherence to the new marking requirements should reduce the potential for substitution of illegal skins and reduce the trade control problems with the similarity in appearance of skins and products among different species of crocodilians. Further, this special rule contains other steps designed to ensure that the United States does not become a market for illegal trade in crocodilian species and to encourage other nations to control illegal trade. With the requirement that all skins are to be tagged, that administrative systems for the effective matching of imported and re-exported skins exist in intermediary countries, that all uncut skins are to be tagged up to the point of manufacture, and that the valuable belly skin pieces wider than 35 centimeters are to be specifically tracked, it is expected that there will be greater accountability and accuracy in the processing and manufacturing of crocodilian skins.

In summary, the special rule allowing limited trade in these saltwater crocodile and Nile crocodile populations should provide incentives to maintain wild populations, as well as encourage all countries involved in commerce in crocodilian species to guard against illegal trade.

1. Saltwater Crocodile. Allowing import of farm-raised specimens is expected to benefit the conservation of wild populations. Under Australia's conservation program, eggs or hatchlings are removed from the wild for crocodile farm operations under an approved management program, and wild populations are carefully monitored. Should any decline occur in the wild populations, the program would return a greater number of 1-year-old captive raised crocodiles to the wild than would have survived to that age in the wild had no eggs or hatchlings been removed. Limited trade with the United States would provide economic incentives for conserving wild populations and their habitats, owing to the dependence on them as the source of eggs. Careful regulation of take and the prescription of specific corrective actions ensure that crocodile farming activities will not cause declines of wild populations, and have the added potential of reversing declines caused by other factors.

In addition, under this special rule, parts or products of the Australian crocodile populations imported into the United States must be identified in accordance with the CITES marking system for crocodile skins and parts (refer to section on marking, and provisions of special rule). These marking requirements should ensure that only legally taken specimens are traded, and thus should also benefit the conservation of the species.

2. Nile crocodile. The appropriateness of the original endangered listing under the Act and the Appendix I listing under CITES of the Nile crocodile has been the subject of much international debate. However, improvements in the status of Nile crocodile populations and their management have prompted the CITES Parties to transfer 11 national populations to Appendix II. The downlisting to a threatened status under the Act does not end trade controls for the species. The species remains in Appendix II of CITES with export permits required. The special rule should strengthen adherence to the CITES marking scheme for crocodilian skins as well as compliance with other CITES trade control provisions. Allowing commercial importation into the United States from CITES-approved countries is expected to benefit the species by encouraging proper conservation practices and by promoting adherence to the CITES marking system.

Effects of the Rule

This rule revises § 17.11(h) to reclassify the Australian population of the saltwater crocodile from endangered to threatened, with a special rule stating that the regulations specifically pertaining to threatened species (50 CFR 17.31, 17.32) would still apply.

The Australian population and the unlisted Papua New Guinea populations are defined by distinct geo-political boundaries that delineate an area representing a significant portion of the range of the species. In addition, both populations are biologically significant in maintaining variability of the species and in preventing the further decline of the species.

Consistent with the requirements of sections 3(3) and 4(d) of the Act, this rule also establishes a special rule by amending 50 CFR 17.42 to allow the importation, under certain conditions, of whole and partial skins, parts, and finished products thereof of populations of Nile crocodiles included in CITES Appendix II which were previously reclassified as threatened (58 FR 49870), and saltwater crocodile that originate in Australia, without a threatened species import permit for individual shipments otherwise required by 50 CFR part 17, if all requirements of the special rule are met.

Available Conservation Measures for Nile and Saltwater Crocodiles

Conservation measures provided to foreign species listed as endangered or threatened under the Act include recognition of degree of endangerment, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by governments, private agencies and groups, and individuals.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions that are to be conducted

within the United States or on the high seas, with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

In general, sections 4(d) and 9 of the Act, and implementing regulations found at 50 CFR 17.31 (which incorporate certain provisions of 50 CFR 17.21), set forth a series of prohibitions and exceptions that generally apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take within the United States or on the high seas, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service, the National Marine Fisheries Service, and State conservation agencies.

In general, permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: scientific, enhancement of propagation or survival, zoological exhibition or educational purposes, incidental taking, or special purposes consistent with the Act. All such permits must also be consistent with the purposes and policy of the Act as required by Section 10(d). Such a permit will be governed by the provisions of § 17.32 unless a special rule applicable to the wildlife (appearing in §§ 17.40 to 17.48) provides otherwise.

Although threatened species are generally covered by all prohibitions applicable to endangered species, under Section 4(d) of the Act, the Secretary may propose special rules if deemed necessary and advisable to provide for the conservation of the species. The rule included in § 17.42 allows commercial importation into the United States of certain farm-raised specimens of Australia's saltwater crocodile population, and certain specimens of Nile crocodile populations downlisted to Appendix II by CITES Parties under ranching or quota provisions as provided for by CITES.

National Environmental Policy Act

The Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 *FR* 49244).

Regulatory Flexibility Act

Based upon its analysis of the identified factors, the Service has determined that:

No individual industries within the United States will be significantly affected and no changes in the demography of populations are anticipated.

Note that some alligator producers, trappers, and dealers may experience some increased competition, but the International Alligator Crocodile Trade Study (1996) prepared by Ashley Associates, Tallahassee, Florida projects an increase in alligator skin trade in 1997, albeit in the projection of total crocodilian trade, the alligator skin trade made up a smaller percentage of the total market. The removal of the threat of possible retaliatory trade prohibition measures directed at alligator parts and products by other countries will at least partially offset any effects of increased competition.

In addition, the two or three known operational tanneries and several product manufacturers in the United States will have access to a new source of crocodile skins; and because of this increase in supply, this may lower prices on legally imported crocodile skins.

Furthermore, retailers will be able to legally buy products made from these previously prohibited species. Consequently, the U.S. consumer will have a wider selection of materials and possibly benefit from lower prices.

To the extent that the total market in crocodilian products is expanded, the States may benefit from additional sale tax collections.

Importers taking advantage of the possibility of expanded trade will incur the risk of specimens being seized by U.S. enforcement agents if the specimens are not tagged at the time of import in accordance with the CITES tagging resolution or if imported from a country not effectively implementing the CITES tagging resolution. Note that any such countries will be identified in Notices of Information published in the Federal Register with a current list of such countries available from the Fish and Wildlife Service's Office of Management Authority.

This rule will not impose any additional requirements on U.S. exporters or importers of crocodilian skins or products provided the present CITES tagging and permitting requirements are followed.

The Service, in light of the above analysis, has determined that the rule will not have a significant economic effect on a substantial number of small entities as defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.* It has therefore, been determined that a ''small entity flexibility analysis'' study is not necessary.

Other Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and has found it to contain no information collection requirements.

The Service concludes that the rule is not a significant regulatory action in the sense of Executive Order 12886, and was not subject to review by the Office of Management and Budget under Executive Order 12886.

This rule will not have substantial direct effects on the States, in their relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. These revisions to the regulations in 50 CFR 17 are of a kind consistent with the existing parameters of established Federal authority.

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

In accordance with Executive Order 12630, it has been determined that the rule has no potential takings of private property implications as defined by the Executive Order 12630.

The Service, in promulgating this rule, has determined that these regulations meet the applicable standards provided in Section 3(a) and (b) of Executive Order 12988.

References Cited

International Union for Conservation of Nature and Natural Resources. 1975. Red Data Book: Amphibia and Reptilia. Morges, Switzerland.

International Union for Conservation of Nature and Natural Resources (IUCN). 1990. IUCN Red List of Threatened Animals. IUCN Conservation Monitoring Center. Cambridge, England.

King, F.W., H.W. Campbell, H. Messel, and R. Whitaker. 1979. Review of the status of the estuarine or saltwater crocodile, *Crocodylus porosus*. Unpub. Report. 33pp.

Webb, G.J.W., M.L. Dillion, G.E. McLean, S.C. Manolis and B. Ottley. 1989. Monitoring the recovery of the saltwater crocodile (*Crocodylus porosus*) population in the Northern Territory of Australia. In: Proceedings of the 9th working meeting of the Crocodile Specialist Group of the Species Survival Commission of the International Union for Conservation of Nature and Natural Resources. October, 1989. Lae, Papua New Guinea.

Author

The primary author of this rule is Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Rm 725 Arlington Square; 4401 North Fairfax Drive, Arlington, Virginia 22203 (703–358–1708)

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgation

Accordingly, part 17 subchapter B of chapter I, title 50 of the U.S. Code of Federal Regulations is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by revising the entry for the ''Crocodile, saltwater (=estuarine)'' under ''Reptiles'' on the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
REPTILES							
Crocodile, saltwater (=estuarine).	Crocodylus porosus	South Asia, Australia, Papua New Guinea, Pacific Islands.	Entire, except Papua New Guinea and Australia.	E	87___	NA	NA
Do.....	..... do.....	.....do.....	Australia.....	T	87___	NA	17.42(c)

3. Paragraph (c) of § 17.42 is revised to read as follows:

§ 17.42 Special rules—reptiles.

* * * * *

(c) *Threatened crocodilians.* This paragraph applies to the following species: Saltwater crocodile (*Crocodylus porosus*) originating in Australia (also referred to as Australian saltwater crocodile) and Nile crocodile (*Crocodylus niloticus*) populations listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Convention).

(1) *Definitions of terms for purposes of this paragraph (c).*

(i) *Crocodilian skins* means whole or partial skins, flanks, and bellies (whether salted, crusted, tanned, partially tanned, or otherwise processed).

(ii) *Crocodilian parts* means meat and body parts with or without skin attached (including tails, throats, feet, and backstrips and other parts), except skulls.

(iii) *Country of re-export* means those intermediary countries that import and re-export crocodilian skins, parts, and/or products, except that those countries through which crocodilian skins, parts, and/or products are transhipped while remaining under Customs control will not be considered to be a country of re-export.

(iv) *Tagging resolution* shall mean the CITES resolution entitled ''Universal Tagging System for the Identification of Crocodilian Skins'' and numbered Conf. 9.22 and any subsequent revisions.

(2) *Prohibitions.* All provisions of § 17.31 (a) and (b) and § 17.32 apply to Nile crocodile populations listed in Appendix I of CITES. The following prohibitions apply to saltwater crocodiles (*Crocodylus porosus*) originating in Australia and to all Nile crocodile (*Crocodylus niloticus*) populations in Appendix II of CITES:

(i) *Import, export, and re-export.* Except as provided in paragraph (c)(3) of this section, it is unlawful to import, export, re-export, or present for export or re-export any Nile crocodile (*Crocodylus niloticus*) or Australian saltwater crocodile (*Crocodylus porosus*) or their skins, other parts or products, without valid permits required under 50 CFR parts 17 and 23.

(ii) *Commercial activity.* Except as provided in paragraph (c)(3) of this section, it is unlawful, in the course of a commercial activity, to sell or offer for sale, deliver, receive, carry, transport, or ship in interstate or foreign commerce any Nile or saltwater crocodile, crocodilian skins, or other parts or products.

(iii) It is unlawful for any person subject to the jurisdiction of the United States to commit, attempt to commit, solicit to commit, or cause to be committed any acts described in paragraphs (c)(2)(i)–(iii) of this section.

(3) *Exceptions.* The import, export, or re-export of, or interstate or foreign commerce in live crocodiles, crocodilian skins, meat, skulls, and other parts or products may be allowed without a threatened species permit issued pursuant to 50 CFR 17.32 when the provisions in 50 CFR parts 13, 14, and 23, and the applicable paragraphs set out below have been met.

(i) *Import, export, or re-export of crocodilian skins and parts.* The import, export, or re-export into/from the United States of crocodilian skins and parts of Nile crocodiles listed in Appendix II of the Convention, and of saltwater crocodiles originating in Australia must meet the following conditions:

(A) All crocodilian parts must be in a transparent, sealed container, and each container imported into or presented for export or re-export from the United States after July 24, 1997,

(1) Must have a parts tag attached in such a way that opening of the container will preclude reuse of an undamaged tag,

(2) This parts tag must contain a description of the contents and total weight of the container, and

(3) This parts tag must reference the number of the CITES permit issued to allow the export or re-export of the container;

(B) Each crocodilian skin and each belly skin piece wider than 35 cm. imported into or presented for export or

re-export from the United States after July 24, 1996, must bear: *either* an intact, uncut tag from the country of origin meeting all the requirements of the CITES tagging resolution, *or* an intact, uncut tag from the country of re-export where the original tags have been lost or removed from raw, tanned, and/or finished skins. The replacement tags must meet all the requirements of the CITES tagging resolution, except showing the country of re-export in place of the country of origin, provided those re-exporting countries have implemented an administrative system for the effective matching of imports and re-exports consistent with the tagging resolution. Clearance of any shipment with more than 25 percent replacement tags requires prior consultation with the U.S. Office of Management Authority by the re-exporting country to determine whether the requirements of the tagging resolution have been observed;

(C) The same information that is on the tags must be given on the export permit for all skins or re-export certificate for whole skins and belly skin pieces wider than 35 cm or on a separate sheet, which will be considered an integral part of the document, carry the same permit or certificate number, and be validated by the government authority designated by the CITES-document issuing authority;

(D) The Convention permit or certificate must contain the following information:

(1) the country of origin, its export permit number, and date of issuance;

(2) if re-export, the country of re-export, its certificate number, and date of issuance; and

(3) if applicable, the country of last re-export, its certificate number, and date of issuance;

(E) The country of origin and any intermediary country(s) must be effectively implementing the tagging resolution for this exception to apply. If the Service receives substantial evidence from the CITES Secretariat or other reliable sources that the tagging resolution is not being effectively implemented by a specific country, the Service will prohibit or restrict imports from such country(s) as appropriate for the conservation of the species.

(F) At the time of import, for each shipment covered by this exception, the country of origin and each country of re-export involved in the trade of a particular shipment is not subject to a Schedule III Notice of Information pertaining to all wildlife or any members of the Order Crocodylia that may prohibit or restrict imports. A listing of all countries that are subject to such a Schedule III Notice of Information will be available by writing: The Office of Management Authority, ARLSQ Room 430, 4401 N. Fairfax Drive, U.S. Fish and Wildlife Service, Arlington, Virginia, 22203.

(ii) *Import, export or re-export of crocodilian products.* Import, export, or re-export into or from the United States of crocodilian products of Nile crocodiles listed in Appendix II of the Convention, and saltwater crocodiles originating in Australia will be allowed without permits required by 50 CFR part 17 provided the following conditions are met:

(A) The Convention permit or certificate must contain the following information:

(1) the country of origin, its export permit number, and date of issuance;

(2) if re-export, the country of re-export, its certificate number, and date of issuance; and

(3) if applicable, the country of previous re-export, its certificate number, and date of issuance;

(B) The country of origin and any intermediary country(s) must be effectively implementing the tagging resolution for this exception to apply. If the Service receives substantial evidence from the CITES Secretariat or other reliable sources that the tagging resolution is not being effectively implemented by a specific country, the Service will prohibit or restrict imports from such countries as appropriate for the conservation of the species.

(C) At the time of import, for each shipment covered by this exception, the country of origin and each country of re-export involved in the trade of a particular shipment is not subject to a Schedule III Notice of Information pertaining to all wildlife or any member of the Order Crocodylia that may prohibit or restrict imports. A listing of all countries that are subject to such a Schedule III Notice of Information will be available by writing: The Office of Management Authority, ARLSQ Room 430, 4401 N. Fairfax Drive, U.S. Fish and Wildlife Service, Arlington, Virginia, 22203.

(iii) *Shipments of eggs, skulls, meat, scientific specimens and live specimens.* The import/re-export into/from the United States of eggs, skulls, meat, scientific specimens and live specimens of Nile crocodile populations listed in Appendix II of CITES or Australian saltwater crocodile will be allowed without permits otherwise required by 50 CFR part 17, provided the requirements of part 23 are met.

(iv) *Noncommercial accompanying baggage.* The conditions of paragraphs (c)(3)(i) and (ii) for skins tagged in accordance with the tagging resolution, skulls, meat, other parts, and products made of specimens of Nile crocodile populations on CITES Appendix II or of Australian saltwater crocodile do not apply to noncommercial accompanying personal baggage or household effects.

(v) *Personal sport-hunted trophies.* The import of personal sport-hunted trophies, including skulls, of Nile crocodile or saltwater crocodile from Appendix II populations will be allowed from country of origin and intermediary countries into the United States without permits required by 50 CFR part 17, provided that unmounted skins bear an intact, uncut tag from the country of origin or such a tag accompanies mounted specimens in accordance with the tagging resolution.

(4) *Notice of Information.* Except in rare cases involving extenuating circumstances that do not adversely affect the conservation of the species, the Service will issue a Schedule III Notice of Information banning or restricting trade in specimens of crocodilians addressed in this paragraph (c) if any of the following criteria are met:

(i) The country is listed in a Notification to the Parties by the CITES Secretariat as lacking designated Management and Scientific Authorities that issue CITES documents or their equivalent.

(ii) The country is identified in any action adopted by the Parties to the Convention, the Convention's Standing Committee, or in a Notification issued by the CITES Secretariat, whereby Parties are asked to not accept shipments of specimens of CITES-listed Species from the country in question.

(iii) The Service determines, based on information from the CITES Secretariat or other reliable sources that the country is not effectively implementing the tagging resolution.

Dated: March 18, 1996.

George T. Frampton, Jr.,

Assistant Secretary For Fish and Wildlife and Parks.

[FR Doc. 96–15790 Filed 6–21–96; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 61, No. 122
Monday, June 24, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–202–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Model G–1159 (G–II), G–1159A (G–III), and G–1159B (G–IIB) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Gulfstream Model G–II, G–III, and G–IIB series airplanes. This proposal would require a one-time inspection to detect corrosion of the material layers of the lower aft fuselage skin in Fuselage Station (FS) 580 bulkhead assembly, and repair, if necessary. The proposal also would require modification of the aft fuselage area and various follow-on actions. This proposal is prompted by reports of varying levels of corrosion in the structure at FS 580. The actions specified by the proposed AD are intended to prevent the retention of moisture in the fuselage structure, and subsequent corrosion in FS 580 bulkhead assembly, which could result in reduced structural capability of the skin joint and resultant depressurization of the airplane.

DATES: Comments must be received by August 2, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–202–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–2206. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Steve Flanagan, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; telephone (404) 305–7363; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–202–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–202–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of varying levels of pitting and exfoliation corrosion found in the material layers of the lower aft fuselage skin of Fuselage Station (FS) 580 on Gulfstream Model G–II series airplanes. This corrosion was detected by operators while performing visual inspections of the bulkhead area during routine maintenance checks. FS 580 is the location where the aft pressure dome ties into the fuselage. This FS consists of ''multiple stackup material,'' such as: a splice strap, fail-safe strap, skin, frame, stringers, longeron, and the pressure dome. Corrosion in this area is apparently caused by the accumulation of moisture, due to condensation in the unpressurized aft fuselage. This condition, if not corrected, could result in reduced structural capability of the skin joint and resultant depressurization of the airplane.

Since the aft pressure bulkhead area on the Model G–II series airplanes is similar to that on Model G–III and Model and G–IIB series airplanes, all of these models may be subject to this same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Gulfstream Customer Bulletin No. 411 (for Model G–II and G–IIB series airplanes) and No. 125 (for Model G–III series airplanes), both dated January 28, 1994. These customer bulletins describe procedures for a one-time visual inspection or an inspection using backscattered radiation detection technique (ComScan) to detect corrosion in the FS 580 bulkhead assembly.

In addition, the FAA has reviewed and approved Gulfstream Aircraft Service Change No. 463 (for Model G–II and GIIB series airplanes) and No. 267 (for Model G–III series airplanes), both dated July 21, 1995. These aircraft service changes describe procedures to:

1. add pressure sealing drain holes in the aft fuselage area, which will provide drain paths for condensed water that has accumulated;
2. remove aluminum-backed foam from the bays below the floor;
3. modify the fuselage structure;
4. modify the intercoastals;
5. drill drain holes in the area of Longeron #24L and Stringer #23L, and Longeron #24R and Stringer #23R; and

6. treat the structural surfaces with corrosion inhibitors.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time inspection to detect corrosion of FS 580, and repair, if necessary. This inspection could be accomplished using either detailed visual inspection techniques or ComScan techniques.

This proposed AD also would require that operators submit a report to the FAA of the findings of this inspection. The information obtained from these reports will enable the FAA to determine how widespread the problem is in the fleet and if additional action is warranted.

In addition, the proposed AD would require:

1. adding pressure sealing drain holes in the aft fuselage area;
2. removing aluminum-backed foam;
3. modifying the fuselage structure;
4. modify the intercostals;
5. drill drain holes in the area of Longeron #24L and Stringer #23L, and Longeron #24R and Stringer #23R; and
6. treat the structural surfaces with corrosion inhibitors.

Repair of corrosion would be required to be accomplished in accordance with a method approved by the FAA. Other actions would be required to be accomplished in accordance with the Gulfstream customer bulletins and aircraft service changes described previously.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Differences Between the Proposed Rule and Relevant Service Information

Operators should note that, in the relevant service documents, the manufacturer recommends that the one-time inspection be accomplished within 18 months for Model G–II and G–IIB series airplanes, and within 36 months for Model G–III series airplanes. In developing an appropriate compliance time for this proposed rule, the FAA took into consideration not only those recommended compliance times, but the safety implications, normal maintenance schedules for timely accomplishment of the inspection, and the number of days usually required for the rulemaking process. In consideration of all of these factors, the FAA finds that the compliance times for the one-time inspection as proposed in this action (6 months for Model G–11 and G–IIB series airplanes, and 12 months for Model G–III series airplanes) will fall approximately at the same time of compliance as recommended by the manufacturer.

Cost Impact

There are approximately 425 Gulfstream Model G–II, G–IIB, and G–III series airplanes of the affected design in the worldwide fleet. The FAA estimates that 345 airplanes of U.S. registry would be affected by this proposed AD.

To accomplish the one-time inspection using detailed visual inspection techniques (which requires some disassembly) would take approximately 1,500 work hours per airplane. To accomplish the one-time visual inspection using ComScan techniques would take approximately 16 work hours per airplane. The average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed one-time inspection on U.S. operators is estimated to be between $960 and $90,000 per airplane, depending upon the type of inspection performed.

To accomplish the proposed modification would take approximately 80 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to $1,656,000, or $4,800 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Gulfstream: Docket 95–NM–202–AD.

Applicability: All Model G–1159 (G–II), G–1159A (G–III), and G–1159B (G–IIB) series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural capability of the skin joint and resultant depressurization of the airplane, as a result of the problems associated with corrosion of the structure surfaces aft of fuselage station (FS) 580, accomplish the following:

(a) For Model G-II and G-IIB series airplanes: Within 6 months after the effective date of this AD, perform a detailed visual inspection, or perform an inspection using a backscattered radiation detection technique (ComScan), to detect corrosion of the FS

580 bulkhead, in accordance with Gulfstream Customer Bulletin No. 411, dated January 28, 1994. If any corrosion is found, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

(b) For Model G-III series airplanes: Within 12 months after the effective date of this AD, perform a one-time detailed visual inspection, or perform an inspection using a backscattered radiation detection technique (ComScan), to detect corrosion of the FS 580 bulkhead, in accordance with Gulfstream Customer Bulletin No. 125, dated January 28, 1994. If any corrosion is found, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta ACO.

(c) For all airplanes: Within 10 days after accomplishing the inspection required by paragraph (a) or (b) of this AD, submit a report of the inspection results (both positive and negative findings) to the FAA, Manager, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30338–2748; fax (404) 305–7333. The report must include the information specified in paragraphs (d)(1), (d)(2), (d)(3), and (d)(4) of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120–0056.

(1) Airplane model, serial number, date of manufacture, and total number of hours time-in-service.

(2) Date of inspection, and method of inspection.

(3) Summary of inspection results, including extent and location of corrosion.

(4) List of parts replaced, if applicable.

(d) For all airplanes: Within 12 months after the effective date of this AD, add pressure sealing drain holes in the aft fuselage area; remove all the aluminum-backed foam insulation from the skins in the bays between Longerons #24 left and #24 right from FS 539 through FS 580 inclusive; modify the fuselage structure; modify the intercostals; drill drain holes in the area of Longeron #24L and Stringer #23L, and Longeron #24R and Stringer #23R; and treat the structural surfaces with corrosion inhibitor; in accordance with either paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) For Model G-II and G-IIB series airplanes: Perform the actions in accordance with Gulfstream Aircraft Service Change No. 463, dated July 21, 1995.

(2) For Model G-III series airplanes: Perform the actions in accordance with Gulfstream Aircraft Service Change No. 267, dated July 21, 1995.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 17, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–15955 Filed 6–21–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 96–AAL–4]

Proposed Revision of Class D and E Airspace; Bethel, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This revision modifies the Class D and Class E airspace at Bethel, AK, to accommodate Visual Flight Rules (VFR) traffic in the Bethel area, landing and departing from Hanger Lake located about 2.5 miles northeast of the Bethel VORTAC. Several Bethel Airport user groups, during public discussion on the decommission of the Bethel Approach Control, requested an exclusion area for Hanger Lake to accommodate VFR landings and takeoffs during Instrument Flight Rules (IFR) weather conditions at Bethel. The area would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate exclusion from Bethel, AK, Class D and Class E airspace to accommodate Bethel user group requirements at Hanger Lake.

DATES: Comments must be received on or before August 12, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 96–AAL–4, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT:

Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5902.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AAL–4.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each

substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class D and Class E airspace at Bethel, AK. Changes to the Bethel airspace will incorporate an exclusion below 1,100 feet MSL between the 061° radial and the 081° radial from 2.9 nautical miles northeast to the Bethel VORTAC. The changes are required to create a Hanger Lake exclusion area as requested by Bethel Airport user groups for VFR operations when Bethel has IFR weather conditions. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace area designations are published in paragraph 5000 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D and Class E airspace designations listed in this document would be published subsequently in the Order. The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routing amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034); February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g), 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designation and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AAL AK D Bethel, AK

Bethel Airport, AK
(Lat. 60°46′47″ N, long. 161°50′17″ W)
Bethel VORTAC
(Lat. 60°47′05″ N, long. 161°49′27″ W)

That airspace extending upward from the surface to and including, 2,600 feet MSL within a 4.1-mile radius of the Bethel Airport, excluding that portion below 1,100 feet MSL between the 061° radial and the 081° radial from 2.9 miles northeast of the Bethel VORTAC. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E4 Bethel, AK

Bethel Airport, AK
(Lat. 60°46′47″ N, long. 161°50′17″ W)
Bethel VORTAC
(Lat. 60°47′05″ N, long. 161°49′27′ W)

That airspace extending upward from the surface within 3 miles each side of the 022° radial from the Bethel VORTAC, extending from the 4.1-mile radius of the Bethel Airport to 8.2 miles northeast of the airport, excluding that portion below 1,100 feet MSL between the 061° radial and the 081° radial from 2.9 miles northeast of the Bethel VORTAC, within 3.4 miles each side of the Bethel VORTAC 006° radial, extending from the 4.1-mile radius of the Bethel Airport to 11 miles north of the Bethel VORTAC and within 3.5 miles each side of the Bethel VORTAC 213° radial extending from the 4.1-mile radius of the Bethel Airport to 10 miles southwest of the airport.

* * * * *

Issued in Anchorage, AK, on June 12, 1996.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 96–15986 Filed 6–21–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–AAL–2]

Proposed Revision of Class E Airspace; Wrangell, St. Paul Island, Petersburg, and Sitka, AK; Establishment of Class E Airspace at Noatak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise Class E airspace at Wrangell, St. Paul Island, Petersburg, and Sitka, AK, and establish Class E airspace at Noatak, AK. The FAA has developed Global Positioning System (GPS) instrument approach procedures at Wrangell Airport, James A. Johnson Airport (Petersburg), and Sitka Airport; a Microwave Landing System (MLS) approach procedure at St. Paul Island Airport; and Non-directional beacon (NDB)/Distance Measuring Equipment (DME) approach procedure at Noatak Airport, Alaska. Changes to the Wrangell airspace incorporated a new Wrangell Localizer course, provided new segment widths, and will declutter the chart depiction. Changes to the Petersburg airspace incorporated protected airspace for transition to approach, provided new segment widths to Fredericks Point NDB 140° bearing, corrected the misspelling of Level Island, and changed the altitude needed for the missed approaches. Changes to the Sitka airspace incorporated protected airspace for the holding pattern. Changes to the St. Paul Island airspace incorporated new coordinates for the airport and non-directional beacon. Noatak Class E airspace will be established for NDB/DME instrument approach procedures. This action will change the Noatak Airport status from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR).

The areas would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate Class E airspace to contain IFR operations in controlled airspace.

DATES: Comments must be received on or before August 12, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AAL–530, Docket No. 96–AAL–2, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5902.

SUPPLEMENTARY INFORMATION:

Comments invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No.96–AAL–2.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the System Management Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Wrangell, St. Paul Island, Petersburg, and Sitka, AK, and establishing Class E airspace at Noatak, AK. The FAA has developed IFR approach and departure procedures using Global Positioning System (GPS) at Wrangell Airport, James A. Johnson Airport (Petersburg), and Sitka Airport; a Microwave Landing System (MLS) approach procedures at St. Paul Island Airport; and NDB/DME approach procedures at Noatak, Alaska. The Wrangell airspace will incorporate a new Wrangell Localizer course, provide new segment widths, and the area chart will have a cleaner, less cluttered depiction. The Petersburg airspace will incorporate protected airspace for the transition to approach, provide new segment widths along the Fredericks Point NDB 140° bearing, corrected the spelling of Level Island, and lowered the altitude needed for missed approaches from 5,500 to 3,300 feet. The Sitka airspace will incorporate protected airspace for the holding pattern to runway 11. The St. Paul Island airspace will incorporate the revised coordinates for the NDB and airport. New Class E airspace will be established for Noatak, AK, to accommodate a new NDB/DME instrument approach procedure. The Noatak Airport status will change from VFR to IFR. The areas would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as 700/1200 foot transition areas are published in Paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order. The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g), 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6002 The Class E airspace areas listed below are designated as a surface area for an airport.

* * * * *

AAL AK E2 Petersburg, AK [New]

Petersburg Airport, AK
(Lat. 56°48′06″ N, long. 132°56′43″ W)

Within a 4.1-mile radius of the James A. Johnson Airport, Petersburg, Alaska. The Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously

published in the Supplement Alaska (Airport/Facility Directory).

* * * * *

AAL AK E2 Wrangell, AK [New]

Wrangell Airport, AK
(Lat. 56°29′04″ N, long. 132°22′11″ W)

Within a 4.1-mile radius of the Wrangell Airport, Alaska. The Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Supplement Alaska (Airport/Facility Directory).

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Wrangell, AK [Revised]

Wrangell Airport, AK
(Lat. 56°29′04″ N, long. 132°22′11″ W)
Wrangell Localizer
(Lat 56°29′03″ N, long. 132°21′45″ W)
Level Island VOR/DME
(Lat. 56°28′04″ N, long. 133°04′59″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Wrangell Airport and within 2.5 miles south and 3.5 miles north of the Wrangell Localizer front course extending from the 6.5-mile radius to 17.5; miles northwest of the airport; and that airspace extending upward from 1,200 feet above the surface within 6 miles either side of the Wrangell Localizer front course extending from 14.5 miles west of the airport to 25 miles west of the airport and within 4 miles each side of the Level Island VOR/DME 086° radial extending from the VOR/DME to the Localizer; and within 5 miles west and 6 miles east of the 148° bearing from the Wrangell NDB extending to 25 miles southeast of the airport; and that airspace extending upward from 5,700 feet MSL within 32 miles of the Level Island VOR/DME extending clockwise from the VOR/DME 327° radial to the VOR/DME 035° radial.

* * * * *

AAL AK E5 Petersburg, AK [Revised]

Petersburg Airport, AK
(Lat. 56°48′06″ N, long. 132°56′43″ W)
Level Island VOR/DME
(Lat. 56°28′04″ N, long. 133°04′59″ W)
Petersburg Localizer
(Lat. 56°48′02″ N, long. 132°55′34″ W)
Fredericks Point NDB
(Lat. 56°47′32″ N, long. 132°49′15″ W)

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Petersburg Airport; and that airspace extending upward from 1,200 feet above the surface within 4 miles east and 7 miles west of the Petersburg Localizer front course extending from the 6.5-mile radius to 51 miles north of the Level Island VOR/DME and within 4 miles northeast and 5 miles southwest of the Fredericks Point NDB 140° bearing extending from the 6.5-mile radius to 10 miles southeast of the NDB; and that airspace extending upward from 3,300 feet MSL within 5 miles either side of the Level Island VOR/DME 013° radial from the 6.5-mile radius to the VOR/DME; and that airspace extending upward from 4,200 feet MSL within 28.6 miles of the Level Island VOR/DME extending clockwise from the VOR/DME 011° radial to the 148° radial; and that airspace extending upward from 5,700 feet MSL within 51 miles of the VOR/DME extending clockwise from the Level Island VOR/DME 326° radial to the 011° radial; excluding that airspace within the Sitka, AK, Class E airspace area.

* * * * *

AAL AK E5 Sitka, AK [Revised]

Sitka Airport, AK
(Lat. 57°02′50″ N, long. 135°21′41″ W)
Biorka Island VORTAC
(Lat. 56°51′34″ N, long. 135°33′04″ W)
Sitka Localizer
(Lat. 57°02′53″ N, long. 135°21′54″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Sitka Airport and within 4 miles each side of the 029° and 209° radials of the Biorka Island VORTAC extending from the 6.6-mile radius to 1 mile south of the VORTAC and within a 14-mile radius of the Biorka Island VORTAC extending clockwise from the 127° radial to the 323° radial and within 4 miles west and 8 miles east of the Biorka Island VORTAC 209° radial extending from the 14-mile radius to 16 miles southwest of the VORTAC and within 4 miles east and 6 miles west of the Sitka Localizer front course extending from the Sitka Localizer to 22 miles northwest of the airport; and that airspace extending upward from 1,200 feet above the surface within a 40-mile radius of the Biorka Island VORTAC; and that airspace extending upward from 5,500 feet MSL within an 85-mile radius of the VORTAC; excluding that airspace within Control 1487L; more than 12 miles from the shoreline; and within the Juneau, AK, and the Ketchikan, AK, Class E airspace areas.

* * * * *

AAL AK E5 St. Paul Island, AK [Revised]

St. Paul Island Airport, AK
(Lat. 57°10′10′02.30″ N, long. 170°13′13.60″ W)
St. Paul Localizer
(Lat. 57°10′44.56″ N, long. 170°13′00.39″ W)
St. Paul NDB/DME
(Lat. 57°09′28″ N, long. 170°13′51″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the St. Paul Island Airport and within 4 miles west and 8 miles east of the St. Paul Localizer front course extending from 4 miles south of the St. Paul NDB/DME to 20 miles south of the NDB/DME and within 4 miles east and 8 miles west of the St. Paul Localizer back course extending from 5 miles north on the NDB/DME to 21 miles north of the NDB/DME and within 4 miles east and 8 miles west of the 018° bearing from the NDB/DME extending from 6 miles north of the NDB/DME to 22 miles north of the NDB/DME; and that airspace extending upward from 1,200 feet above the surface within 14 miles of the NDB/DME.

* * * * *

AAL AK E5 Noatak, AK [New]

Noatak Airport, AK
(Lat. 67°33′58″ N, long. 162°58′40″ W)
Noatak NDB/DME
(Lat. 67°34′19″ N, long. 162°58′26″ W)

That airspace extending upward from 700 feet MSL above the surface within a 6.5-mile radius of the Noatak Airport and within 4 miles either side of the 197° bearing from the Noatak NDB/DME from the 6.5-mile radius to 10 miles southwest of the NDB/DME; and that airspace extending upward from 1,200 feet above the surface within 4 miles either side of the 197° bearing from the Noatak NDB/DME extending from the 6.5-mile radius to 14 miles southwest and within 4 miles east and 5 miles west of the 017° bearing from the NDB/DME extending from the 6.5-mile radius to 11 miles northeast of the NDB/DME.

* * * * *

Issued in Anchorage, AK, on June 12, 1996.

Willis C. Nelson,

Manager, Air Traffic Division Alaskan Region.

[FR Doc. 96–15985 Filed 6–21–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 96–ASO–12]

Proposed Amendment to Class E Airspace; Tampa, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Tampa, FL. A GPS RWY 18 Standard Instrument Approach Procedure (SIAP) has been developed for Vandenburg Airport. Controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at Vandenburg Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of this SIAP.

DATES: Comments must be received on or before August 1, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 96–ASO–12, Manager, Operations Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT:

Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–ASO–12.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Operations Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to modify class E airspace at Tampa, FL. A GPS RWY 13 SIAP has been developed for Vandenburg Airport. Controlled airspace extending upward from 700 feet AGL is needed to accommodate this SIAP and for IFR operations at Vandenburg Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of this SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASO GA E5 Tampa, FL [Revised]

Tampa International Airport, FL
(Lat. 27°58′32″ N, long. 82°31′59″ W)
St. Petersburg-Clearwater International Airport
(Lat. 27°54′39″ N, long. 82°41′14″ W)
MacDill AFB
(Lat. 27°50′57″ N, long. 82°31′17″ W)
Peter O'Knight Airport
(Lat. 27°54′56″ N, long. 82°26′57″ W)
Albert-Whitted Airport
(Lat. 27°45′54″ N, long. 82°37′38″ W)
Vandenburg Airport
(Lat. 28°00′33″ N, long. 82°20′59″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Tampa International Airport, St. Petersburg-Clearwater International Airport, MacDill AFB and Peter O'Knight Airport and within a 6.3-mile radius of Albert-Whitted Airport and Vandenburg Airport, excluding that airspace within the Lakeland, FL, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on June 5, 1996.

Benny L. McGlamery,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 96–15981 Filed 6–21–96; 8:45 am]

BILLING CODE 4910–13–M

Office of the Secretary

14 CFR Part 241

[Docket No. OST–95–744; Notice No. 96–18]
RIN Number 2139–AA04

Passenger Origin-Destination Survey Reports

AGENCY: Office of Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Transportation (DOT or the Department) proposes that large certificated U.S. air carriers participating in code-share arrangements report both the ticketing and operating air carriers in their quarterly Passenger Origin-Destination Survey reports. DOT needs the information to assess accurately the effects of code-sharing alliances in air transportation. Also, the Department proposes to expand by one position the field entitled ''Total Dollar Value of Ticket'' to accommodate current charges; and to standardize the format for floppy disk submissions using the

same 200 character record layout that is used for magnetic tape submissions. This action is taken on the Department's own initiative.

DATES: Comments are due August 23, 1996.

ADDRESSES: Comments should be directed to the Docket Clerk, Docket OST–95–744, room PL 401, Office of the Secretary, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001 from 10 a.m. to 5 p.m. ET, Monday through Friday, except Federal Holidays.

Comments: Comments should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on Docket OST–95–744. The postcard will be dated/time stamped and returned to the commenter. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–25, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4387.

SUPPLEMENTARY INFORMATION:

Background

Code-sharing has become increasingly widespread in both interstate and foreign air transportation. Congress has urged the DOT to analyze more thoroughly the effects of international code-sharing on air transportation and U.S. air carriers. In testimony before the Senate Committee on Commerce, Science, and Transportation in June 1995, the Secretary pledged to expand the DOT's monitoring of the effects of code-sharing.

Under the current Passenger Origin-Destination Survey (Survey) reporting system, the DOT has difficulty evaluating the effects of code-sharing alliances on air carriers and consumers. As currently designed, the Survey does not identify both carriers on a code-share ticket. According to instructions sent to participating carriers on September 11, 1995, the Survey identifies the carrier transporting the passenger (operating carrier), but not the ticketing carrier (carrier of record on the ticket).

To assess accurately the effects of international code-share agreements, DOT needs to know the ticketed carrier as well as the transporting carrier for the various legs of the passenger's flight.

If both code-sharing partners are identified in the survey, it will eliminate the need for special reports, as now obtained from certain U.S. carriers, regarding major international code-share alliances.

In the United States, regional carrier service is growing as major carriers are handing over more service to their code-share partners. Service to small communities can be affected by code-sharing, creating a need for DOT to monitor the impact on the communities from code-share services.

Given the need for international code-share data, the need for purely domestic code-share data, and the fact that many international passengers interline on domestic code-share flights, the requirement to report both the ticketed and operating carriers is proposed for both international and domestic tickets. This coverage would benefit participating carriers by eliminating the need for maintaining two reporting systems, one for international service and one for domestic service.

On October 23, 1995, the DOT issued a notice in the Federal Register (60 FR 54407) stating its intention to collect the identities of both the ticketed and operating carriers from code-share operations (Accounting and Reporting Directive No. 194.) This requirement was to become effective on January 1, 1996.

A 30-day comment period was provided. Some of the commenters believed this issue should be addressed by rulemaking. In deference to those comments, the DOT issued Accounting and Reporting Directive No. 198 which rescinded Accounting and Reporting Directive No. 194, and stated the Department's intent to proceed with a rulemaking in order to allow full and public discussion. Other commenters requested a delay in the implementation date, clarification of reporting downline code-shares in which the lifting carrier (reporting carrier) is not a party to the code-share, clarification of reporting code-share information from tickets that are lifted by another carrier, and some carriers requested that the code-share data relating to foreign carriers be withheld from public disclosure.

We propose to collect survey data that identifies both the ticketing and operating air carriers without causing an undue burden on reporting air carriers.

General Definitions

A *participating carrier* is a large certificated U.S. carrier that is required to submit the quarterly Survey.

The *reporting carrier* is the first participating carrier that operates a segment of a passenger's itinerary. The reporting carrier is responsible for submitting the Survey data. DOT proposes that the reporting carrier be responsible for identifying the operating and ticketing carriers for code-shares in which the reporting carrier is a party.

The *ticketed carrier* is the carrier whose two character carrier code appears on the passenger ticket.

The *Passenger Origin-Destination Survey* is a sampling of airline passengers' itineraries. Currently, all participating carriers are reporting a 10-percent sample by reporting all ticket numbers ending with zero. Some carriers using a ticketless reservation system have made an alternative arrangement to report a 10-percent sample. Implementation Date

Given the urgent need for accurate, reliable code-share data, the DOT plans to make the rule effective on the first day of a calendar quarter, at least 60 days after the final rule is published. For example, if the final rule were published on July 30, 1996, the rule would be effective on October 1, 1996, with the first submission due on February 15, 1997. If the final rule were published on August 3, 1996, the rule would be effective on January 1, 1997, with the first submission due on May 15, 1997. The DOT believes this will allow sufficient time for participating air carriers to make necessary changes to their information gathering systems.

Downline Code-Share Flights

The reporting air carrier is responsible for identifying its own code-share partners. When there is a downline code-share segment in which the reporting carrier is not a party, the reporting carrier is not required to expend extra resources to track and properly identify both the operating and ticketed carrier for such downline segments. When a downline operating carrier is not known by the reporting carrier, the reporting carrier would use the ticketed carrier's code to identify the unknown operating carrier. DOT would prefer to have both carriers properly identified on all code-share segments. However, we recognize that, under current conditions, the burden of requiring the reporting carrier to capture other parties' code-share data would likely outweigh the benefits of the data. Where such data *are readily available* to the reporting carrier, it should report both operating and ticketed carriers for downline code-share operations in which they are not a party. This procedure would improve the value of the Survey for all users.

Lifting Tickets

The reporting carrier is responsible for sampling and reporting applicable tickets from *all passengers* carried on flight segments which it operates including, but not limited to, code-share and blocked-space passengers. In some instances, the reporting (operating) carrier may not actually lift the passenger's ticket. Nevertheless, in these cases it is the responsibility of the reporting carrier to get the necessary information from its code-share affiliated carrier to properly report all applicable tickets. Otherwise, passengers will not be properly sampled and the Survey results will be distorted.

Nonreported or Dual Reported Tickets

DOT recognizes that with code-sharing, some tickets that normally would be reported are not reported, and other tickets may be reported twice.

For instance, a passenger is ticketed under a U.S. participating carrier's code and is carried by a foreign carrier. That passenger then interlines with another U.S. participating carrier. The foreign carrier does not report the Survey; and the second operating carrier may believe that the U.S. carrier, appearing on the ticket, operated the first segment and reported the ticket.

If a U.S. carrier operates a flight segment that is ticketed using the code of its foreign air carrier partner, the U.S. carrier would report the Survey data. If that passenger then interlines with a second U.S. carrier, that second U.S. carrier may believe it is the first U.S. operating carrier and also report the Survey data. However, we believe these instances will be the exception and will not materially impact the results of the Survey.

Reporting Examples

Below are some examples of code-share itineraries:

A. Single Segment Itineraries

1. U.S. air carrier (BB) operates under a foreign air carrier's code (FO).

O&D reporting—BB
Operating carrier—BB
Ticketed carrier—FO

2. Foreign air carrier (FO) operates under U.S. air carrier code (BB).

O&D reporting—none (No U.S. participating carrier operated a flight segment)
Operating carrier—FO
Ticketed carrier—BB

3. A nonparticipating U.S. air carrier (NP) operates under a U.S. air carrier's (BB) code.

O&D reporting—none (No U.S. participating carrier operated a flight segment)
Operating carrier—NP
Ticketed carrier—BB

4. U.S. participating air carrier (AB) operates under U.S. participating air carrier's (XY) code.

O&D reporting—AB
Operating carrier—AB
Ticketed carrier—XY

B. Multi Segment Itineraries

1. Foreign air carrier (FO) operates under U.S. air carrier code (BB) then the passenger interlines with US carrier (BB).

O&D reporting—BB (was the first participating U.S. carrier to operate)
First Segment
Operating carrier—FO
Ticketed carrier—BB
Second Segment
Operating carrier—BB
Ticketed carrier—BB

2. U.S. air carrier (BB) operates under a foreign air carrier's code (FO) and the passenger interlines with the foreign carrier.

O&D reporting—BB (operated first segment)
First Segment
Operating carrier—BB
Ticketed carrier—FO
Second Segment
Operating carrier—FO
Ticketed carrier—FO

3. Nonparticipating U.S. air carrier (NP) operates under participating U.S. carrier code (BB) and the passenger interlines with BB.

O&D reporting—BB (operated second segment)
First Segment
Operating carrier—NP
Ticketed carrier—BB
Second Segment
Operating carrier—BB
Ticketed carrier—BB

4. U.S. participating carrier (BB) operates under U.S. participating air carrier (XY) code and the passenger interlines with XY.

O&D reporting—BB
First Segment
Operating carrier—BB
Ticketed carrier—XY
Second Segment
Operating Carrier—XY
Ticketed Carrier—XY

C. Multi Segment Itineraries With Interline Between Code-Share and Noncode-Share Carriers

1. Foreign air carrier (FO) operates under U.S. participating carrier's code (BB) and then the passenger interlines with U.S. participating carrier XY.

O&D reporting—XY (However, this ticket probably would not be reported if XY did not realize it was the first participating carrier to operate)
First Segment
Operating carrier—FO
Ticketed carrier—BB
Second Segment
Operating carrier—XY
Ticketed carrier—XY

2. Foreign air carrier (FO) operates under a U.S. participating carrier's code (BB), the passenger interlines to a BB operated flight and then interlines with U.S. participating air carrier XY.

O&D reporting—BB (operated second segment)
First Segment
Operating carrier—FO
Ticketed carrier—BB
Second Segment
Operating carrier—BB
Ticketed carrier—BB
Third Segment
Operating carrier—XY
Ticketed carrier—XY

3. U.S. air carrier (BB) operates under foreign air carrier's (FO) code, the passenger interlines to the foreign air carrier then to another U.S. air carrier (XY).

O&D reporting—BB (BB operated the first segment; however, there may be duplicate reporting, if XY believed it was the first operating U.S. carrier and also reported the data)
First Segment
Operating carrier—BB
Ticketed carrier—FO
Second Segment
Operating carrier—FO
Ticketed carrier—FO
Third Segment
Operating carrier—XY
Ticketed carrier—XY

4. Nonparticipating U.S. air carrier (NP) operates under a U.S. participating air carrier's code (BB) and the passenger interlines with BB and then with XY.

O&D reporting—BB (operated second segment)
First Segment
Operating carrier—NP
Ticketed carrier—BB
Second Segment
Operating carrier—BB
Ticketed carrier—BB
Third Segment
Operating carrier—XY
Ticketed carrier—XY

5. Nonparticipating U.S. air carrier (NP) operates under a U.S. participating air carrier's code (BB) and the passenger interlines with U.S. participating carrier XY.

O&D reporting—XY (However, this ticket probably would not be reported if XY did not realize it was the first participating carrier to operate)
First Segment
Operating carrier—NP
Ticketed carrier—BB
Second Segment
Operating carrier—XY
Ticketed carrier—XY

6. U.S. participating carrier (BB) operates the first segment; the passenger then interlines on a code-share between AB and XY.

O&D reporting—BB (If BB did not know AB operated second segment it would report XY for both operating and ticketed carriers)
First Segment
Operating carrier—BB
Ticketed carrier—BB
Second Segment
Operating Carrier—AB
Ticketed Carrier—XY

Honored Tickets

There are instances where a reporting carrier may honor the ticket of another carrier (noncode-share partner), and transport the passenger without re-issuing the ticket. In these cases, the reporting carrier should treat the ticket as if it had actually been re-issued and report it accordingly. If the reporting carrier reported the air-carrier code on the actual ticket, it would appear that there is a code-share arrangement between the ticketed and operating carrier when, in fact, there is none.

Confidentiality of Code-Share Data

United, Delta and Northwest believe code-share data relating to their foreign code-share partners should be granted special confidential treatment. DOT disagrees. The DOT policy has been to consistently treat the equal data exchanges of traffic statistics as procompetitive. Carriers enter into code-share arrangements in an attempt to gain marketing advantages. DOT believes that these arrangements should not be given special disclosure treatment, because all participating carriers will be reporting their code-share operations in the same manner. Therefore, we are proposing not to alter the regulations as they pertain to the release of Survey data.

Total Dollar Value of Ticket

The Total Dollar Value of Ticket equals the passenger fare plus any tax or other charges such as Passenger Facility Charges (PFC). Because some fares now exceed $9,999, we propose to expand the ''Total Dollar Value of Ticket'' field by one position.

Standardize Formats for Floppy Disk Submissions

The Department has encouraged carriers that do not have the capability to report via magnetic tape or cartridge to submit their reports via floppy diskettes. To avoid the multitude of formats currently received, we propose to prescribe a 200 position format with standard lengths of fields for submission of personal computer (PC) generated Survey reports. The field descriptions and field lengths will be identical to the fields prescribed for magnetic tape/cartridge submissions (see Appendix A § IX. ADP Instructions of 14 CFR 241.19). However, to simplify the PC submissions, the submitter may report the dollar value of the ticket in the field immediately after the last reported city code, rather than in positions 196–200. Submitters may separate fields by using commas or tabs (comma delimited ASCII or tab delimited ASCII format).

Reporting Burden

We estimate a four-hour increase per response to report both the ticketed and operating carrier and a one-time reprogramming burden of 200 hours per respondent. Some of the code-share operators that have an extensive network may very well experience a larger increase in reporting burden, while carriers that do not code-share or interline will experience less of a reporting burden increase.

We estimate reprogramming costs of $10,000 per carrier (200 hrs. × $50 = $10,000), and an annual burden increase of $800 (16 hrs. × $50 = $800). Total first year cost for the airline industry would be approximately $432,000 (40 carriers × $10,800 = $432,000). After the first year, the annual cost of the rule is estimated to be $800 per carrier and $32,000 for the industry.

Carriers that commented on the October 23, 1995 Federal Register Notice believed that the burden increase would be greater than DOT's estimate. However, these carriers were under the assumption that they would be required to track the code-share flights of alliances in which they were not a participant. Since carriers are not required to track these code-share flights, DOT believes their burden estimates were overstated. DOT encourages carriers to give us their burden and cost estimates for complying to this NPRM.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget.

This rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). The purpose of the rule is to improve the accuracy and reliability of the Survey. This objective will be achieved by amending 14 CFR 241.19–7 to include the collection of the identity of the ticketed carrier along with the identity of the operating carrier. There are about 40 carriers that report the Survey. With the reporting of operating and ticketed carriers, DOT would be able to conduct balance of benefits analyses for international agreements and monitor the adequacy of air service to small communities.

Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism'') and the DOT has determined the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

I certify this proposed rule will not have a significant economic impact on a substantial number of small entities. The amendments will affect only large certificated U.S. air carriers operating scheduled passenger service. The Department's economic regulations define ''large certificated air carrier'' as U.S. air carriers, holding a certificate issued under 49 U.S.C. 41102, that operate aircraft designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds. Consequently, small carriers are not affected by this NPRM.

National Environmental Protection Act

The Bureau of Transportation Statistics has analyzed the proposed amendments for the purpose of the National Environmental Protection Act. The proposed amendments will not have any impact on the quality of human environment.

Paperwork Reduction Act

The reporting and recordkeeping requirements associated with this rule are being sent to the Office of Management and Budget in accordance with 44 U.S.C. Chapter 35 under OMB NO: 2139–0001. *Administration:* Bureau of Transportation Statistics; *Title:* Passenger Origin-Destination Survey Report; *Need for Information:* Statistical information on airline passenger movements; *Proposed Use of Information:* Balance of benefits analyses for international agreements and monitoring adequacy of air service to small communities; *Frequency:* Quarterly; *Burden Estimate:* 46,080 annual hours; *Average Annual Burden Hours per Respondent:* 1152. For further information contact: The Office of

Information Resource Management, M–32, Office of the Secretary of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–4735 or Transportation Desk Officer, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number 2139–AA04 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 14 CFR Part 241

Air carriers uniform system of accounts and reports.

Proposed Rule

Accordingly, the Bureau of Transportation Statistics proposes to amend 14 CFR part 241 *Uniform System of Accounts and Reports for Large Certificated Air Carriers*, as follows:

PART 241—[AMENDED]

1. Revise Sec. 19–7(b) to read as follows:

Sec. 19–7 Passenger origin-destination survey.

(a) * * *

(b) Those participating air carriers that have access to automatic data processing (ADP) services shall utilize magnetic tape, cartridge, floppy diskette or other ADP media for transmitting the prescribed data. Those carriers without ADP capability should contact the Office of Airline Information for further instructions ((202) 366–4373).

* * * * *

2. In Appendix A of Sec. 19–7, revise § V.B to read as follows:

* * * * *

B. *Selection of Reportable Flight Coupons. The flight coupons* identified above are to be examined to isolate the reportable flight coupons, *i.e.* coupons from which data are to be recorded. Flight coupon data are reported only by the first honoring and participating carrier (operating carrier). Such carriers shall report the required data for the entire ticketed itinerary.

If a participating carrier has preceded an examining carrier on any stage in the trip itinerary, including any stage in a conjunction itinerary and any stage in a reissued ticket (either before or after reissue) that coupon is not reportable.

For conjunction tickets, the ticket number for the first ticket booklet determines if the conjunction tickets should be reported in the Survey. Otherwise, conjunction tickets do not require special treatment and are governed by the rules for regular tickets.

No adjustment is made in the Survey for alterations or changes in the trip itinerary subsequent to the stage covered by the reportable coupon.

3. In Appendix A of Sec. 19–7, in § V.D., revise paragraph D.(1); the table in paragraph D.(2)(a); paragraph D.(2)(b); paragraph (c) and the first paragraph of (d) to read as follows:

* * * * *

D. *Recording of Data from Reportable Flight Coupons.* (1) The following items are to be reported from the reportable flight coupons:

(a) Point of origin,

(b) Operating carrier on each flight stage (if unknown, identify ticketed carrier),

(c) Ticketed carrier on each flight stage,

(d) Fare-basis on each flight coupon, C, D, F, G, X or Y,

(e) Points of stopover or connection (interline and intraline),

(f) Point of destination,

(g) Number of Passengers, and

(h) Total dollar value of ticket (fare plus tax or other charges such as Passenger Facility Charges).

(2) * * *

(a) * * *

000001	UCA	YV	UA	Y	JFK	TW	TW	X
Passengers	Utica	Mesa Operating Carrier.	United Ticketed Carrier.	Fare	New York Kennedy Airport.	TWA Operating Carrier.	TWA Ticketed Carrier.	Fare.

SFO	(Surface segment indicator consists of dash dash and a blank in lieu of carrier code and fare-basis code)
San Francisco	Surface segment.

OAK	UA	UA	G	LAX	DL	DL	SLC	F
Oakland	United Operating Carrier.	United Ticketed Carrier.	Fare	Los Angeles	Delta Operating Carrier.	Delta Ticketed Carrier.	Salt Lake City.	Fare.

NW	NW	D	PHX	AA	AA	C	LAX
Northwest Operating Carrier.	Northwest Ticketed Carrier.	Fare	Phoenix	American Operating Carrier.	American Ticketed Carrier.	Fare	Los Angeles.

JL	JL	C	NRT	4596
Japan Air Lines Operating Carrier.	Japan Air Lines Ticketed Carrier.	Fare	Tokyo Narita	Dollars of Fare + Tax.

* * * * *

(b) All entries for operating and ticketed carriers for a coupon stage of an itinerary are to be recorded using two character IATA-assigned or DOT codes, as in the above example. Note that the fare code summary was properly inserted after the ticketed carrier's code, i.e., UA for United Air Lines and Y for unrestricted coach class service. When a two-character carrier code is shown on the ticket, record that code for the

ticketed carrier. However, if a code is obviously incorrect, record the correct carrier code. If the reporting carrier does not know the operating carrier on a downline code-share segment, it may use the ticketed carrier's code for both the operating and ticketed carriers. This applies only when the reporting carrier is not a party to the code-share segment. Except for the infrequent compression of data to fit into the stage-length limitation (7 or 23 stages at the carrier's option), all carrier codes are to be recorded, including data on air taxis, commuters, intra-state, and other carrier portions of itineraries. On tickets involving interchange service or other cooperative carrier arrangements, the juncture point(s) where the passenger moves from one carrier system to another is to be recorded as an intermediate point in the itinerary, even when not shown on the ticket and even though the flight may overfly the junction point.

(c) Entries for fare-basis codes are to be taken from the ''fare basis'' and ''fare description'' portions of the ticket. No Attempt shall be made to determine the record fare-basis code for that portion of a conjunction ticket appearing in the ticket. Fare-basis codes are to be recorded in one-character alphabetic codes. The fare-basis codes are recorded as follows:

C—Unrestricted Business Class
D—Restricted Business Class
F—Unrestricted First Class
G—Restricted First Class
X—Restricted Coach/Economy Class
Y—Unrestricted Coach/Economy Class
U—Unknown (This fare category is used when none is shown on a ticket coupon, or when a fare category is not discernable, or when two or more carrier fare codes are compressed into a single stage of a passenger trip).

(d) In recording the number of passengers, each single-passenger ticket is to be recorded as one passenger. Tickets for infants under two years of age not occupying a seat are not to be counted. A revenue passenger is defined in Section X.

* * * * *

4. In Appendix A to Sec. 19–7, in § IX, revise the first table in paragraph A.(1) and paragraphs B. and C. to read as follows:

* * * * *

A. * * *

(1) * * *

Field	Tape positions (From–To)	Tape record layout
PASSENGER COUNT	1–6	1. Passenger field must contain leading zeros, and no blanks.
1ST CITY CODE	7–9	
1ST OPERATING CARRIER	10–11	
1ST TICKETED CARRIER	12–13	2. City field contains the 3-letter alpha code for the airport in the first 3 positions.
FARE BASIS CODE	14	
2ND CITY CODE	15–17	
2ND OPERATING CARRIER	18–19	
2ND TICKETED CARRIER	20–21	
FARE BASIS CODE	22	
3RD CITY CODE	23–25	
3RD OPERATING CARRIER	26–27	
3RD TICKETED CARRIER	28–29	
FARE BASIS CODE	30	
4TH CITY CODE	31–33	3. Ticketed & operating carrier fields are to contain the 2 character air carrier code. An unknown carrier is to be coded ''UK'' and surface carrier is to be code ''––'' (dash dash).
4TH OPERATING CARRIER	34–35	
4TH TICKETED CARRIER	36–37	
FARE BASIS CODE	38	
5TH CITY CODE	39–41	
5TH OPERATING CARRIER	42–43	
5TH TICKETED CARRIER	44–45	
FARE BASIS CODE	46	
6TH CITY CODE	47–49	4. Fare basis code is a one position alpha code.
6TH OPERATING CARRIER	50–51	
6TH TICKETED CARRIER	52–53	
FARE BASIS CODE	54	5. Portion of record for sorting, summarizing, and sequencing includes columns 7 through 200.
7TH CITY CODE	55–57	
7TH OPERATING CARRIER	58–59	
7TH TICKETED CARRIER	60–61	
FARE BASIS CODE	62	
8TH CITY CODE	63–65	6. Dollar amount in positions 196–200 is right justified.
8TH OPERATING CARRIER	66–67	
8TH TICKETED CARRIER	68–69	
FARE BASIS CODE	70	7. Positions 66–193 are used only by those carriers who want to report more data, and are not compressing to 7 stages (see § V.D. (3) for compressing rules.
9TH CITY CODE	71–73	
9TH OPERATING CARRIER	74–75	
9TH TICKETED CARRIER	76–77	
FARE BASIS CODE	78	
10TH CITY CODE	79–81	
10TH OPERATING CARRIER	82–83	
10TH TICKETED CARRIER	84–85	
FARE BASIS CODE	86	
11TH CITY CODE	87–89	

Field	Tape positions (From–To)	Tape record layout
11TH OPERATING CARRIER	90–91	
11TH TICKETED CARRIER	92–93	
FARE BASIS CODE	94	
12TH CITY CODE	95–97	
12TH OPERATING CARRIER	98–99	
12TH TICKETED CARRIER	100–101	
FARE BASIS CODE	102	
13TH CITY CODE	103–105	
13TH OPERATING CARRIER	106–107	
13TH TICKETED CARRIER	108–109	
FARE BASIS CODE	110	
14TH CITY CODE	111–113	
14TH OPERATING CARRIER	114–115	
14TH TICKETED CARRIER	116–117	
FARE BASIS CODE	118	
15TH CITY CODE	119–121	
15TH OPERATING CARRIER	122–123	
15TH TICKETED CARRIER	124–125	
FARE BASIS CODE	126	
16TH CITY CODE	127–129	
16TH OPERATING CARRIER	130–131	
16TH TICKETED CARRIER	132–133	
FARE BASIS CODE	134	
17TH CITY CODE	135–137	
17TH OPERATING CARRIER	138–139	
17TH TICKETED CARRIER	140–141	
FARE BASIS CODE	142	
18TH CITY CODE	143–145	
18TH OPERATING CARRIER	146–147	
18TH TICKETED CARRIER	148–149	
FARE BASIS CODE	150	
19TH CITY CODE	151–153	
19TH OPERATING CARRIER	154–155	
19TH TICKETED CARRIER	156–157	
FARE BASIS CODE	158	
20TH CITY CODE	159–161	
20TH OPERATING CARRIER	162–163	
20TH TICKETED CARRIER	164–165	
FARE BASIS CODE	166	
21ST CITY CODE	167–169	
21ST OPERATING CARRIER	170–171	
21ST TICKETED CARRIER	172–173	
FARE BASIS CODE	174	
22ND CITY CODE	175–177	
22ND OPERATING CARRIER	178–179	
22ND TICKETED CARRIER	180–181	
FARE BASIS CODE	182	
23RD CITY CODE	183–185	
23RD OPERATING CARRIER	186–187	
23RD TICKETED CARRIER	188–189	
FARE BASIS CODE	190	
24TH CITY CODE	191–193	
BLANK	194–195	
US VALUE OF TICKET IN $	196–200	

* * * * *

B. *Editing of Tape Records.* Prior to submission of data, each carrier is requested to edit and correct its data so that its O&D Survey report may be as error-free as is reasonably practicable. The methods to be used in editing are left to the carriers' discretion, but with assistance available upon request from the Department's Office of Airline Information (OAI). To aid the carriers in maintaining a current file of editing criteria, OAI will re-issue, as needed, the city/airport-carrier file to each participating carrier. There will be a five-position field to denote the city/airport-carrier. The first three positions denotes the airport and the last two positions denotes the air carrier.

C. *Standard Formats for Floppy Disk or Cartridge Submissions.* Carriers should use the 200 position format with the standard length fields prescribed for magnetic media submissions. The record layout is detailed in subsection A(1) of this section. However, to simplify the PC submissions, the submitter may report the dollar value of the ticket in the field immediately after the last reported city code, rather than in positions 196–200. Submitters may separate fields by using commas or tabs (comma delimited ASCII or tab delimited ASCII format).

5. In Appendix A to Sec. 19–7, in § X., revise the definition of ''Fare basis code and add the following new definitions to read as follows:

* * * * *

Fare basis code. The alphabetic code(s) or combination of alphabetic and numeric codes appearing in the ''Fare basis'' box on the flight coupon which describe the applicable service and discount to which the passenger is entitled. All fare basis codes are summarized into basic categories; namely C—Unrestricted Business Class, D—Restricted Business Class, F—Unrestricted

First Class, G—Restricted First Class, X—Restricted Coach/Economy Class, Y—Unrestricted Coach/Economy Class, and U—Unknown (This fare category is used when none is shown on a ticket coupon, or when a fare category is not discernable, or when two or more carrier fare codes are compressed into a single stage of a passenger trip).

* * * * *

Operating air carrier. Under a code-share arrangement, the air carrier whose aircraft and flight crew are used to perform a flight segment.

* * * * *

Ticketed air carrier. Under a code-share arrangement, the air carrier whose two-character air carrier code is used for a flight segment, whether or not it actually operates the flight segment.

* * * * *

Issued in Washington, DC, on May 31, 1996.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 96–16045 Filed 6–21–96; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–238–FOR, #72]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Ohio regulatory program (hereinafter the ''Ohio program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of the Ohio rules pertaining to underground mining. The amendment is intended to revise the Ohio program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., [E.D.T.], July 24, 1996. If requested, a public hearing on the proposed amendment will be held on July 19, 1996. Requests to speak at the hearing must be received by 4:00 p.m., [E.D.t.], on July 9, 1996.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to George Rieger, Field Branch Chief, at the address listed below.

Copies of the Ohio program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Appalachian Regional Coordinating Center.

George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2153

Ohio Division of Mines and Reclamation, 1855 Fountain Square Court, Columbus, Ohio 43224, Telephone: (614) 265–1076

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Telephone: (412) 937–2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the August 10, 1982, Federal Register (42 FR 34688). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Description of the Proposed Amendment

By letter dated May 23, 1996, (Administrative Record No. OH–2166–00) Ohio submitted a proposed amendment to its program pursuant to SMCRA at its own initiative. The provisions of the Ohio Administrative Code (OAC) that Ohio proposes to amend are: OAC 1501:13–4–12(G)(3)(d) and 4 (f) and (i)—Requirements for Special Categories of Mining, OAC 1501:13–9–08 (A) & (B)—Protection of Underground Mining, and OAC 1501:13–13–01—Concurrent Surface and Underground Mining.

Specifically, Ohio proposes to make the following revisions. At OAC 1501:13–4–12(G)(3)(d) and (4) (f) and (i), Ohio proposed to delete the reference to OAC 1501:13–13–01, which is being rescinded, and replace it with a reference to OAC 1501:13–9–08—Protection of Underground Mining. At OAC 1501:13–9–08(A), Ohio proposes to require that Mine Safety and Health Administration concurrence is required only if surface mining operations are to be conducted within 500 feet of active underground coal mines. The reference to the Chief of the Ohio Division of Mines is changed to the Mine Safety Administrator. Subsection (B) which requires that surface mining operations be designed to protect disturbed surface areas so as not to endanger any present or future coal mining operations is deleted. Ohio proposes to delete OAC 1501:13–13–01 which addresses performance standards for concurrent surface and underground mining. This section duplicates language in OAC 1501:13–4–12(G) and 13–9–08.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will be become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under ''DATES'' or at locations other than the Appalachian Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m, [E.D.T.] on July 9, 1996. The location and time of the hearing will be arranged with those persons requesting the hearing. If no none requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing

will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any government entity or the private sector.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 12, 1996.

Claude L. Downing,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 96–16008 Filed 6–21–96; 8:45 am]

BILLING CODE 4310–05–M

National Park Service

36 CFR Part 3

RIN 1024–AC46

National Park Service; Boating and Water Use Activities, Prohibited Operations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing to amend its boating regulations to include the authority to regulate the access to NPS waters of individuals and vessels that have recently operated in waters infested with injurious non-indigenous aquatic plant and animal species. The purpose of the proposed rule is to protect park aquatic natural resources and supporting built infrastructure. This proposed rule includes criteria for decontamination of vessels and equipment to allow access to park waters. In addition, these rules identify how vessels may be allowed to operate under a permit system outlined in the general regulations. These rules will allow the NPS to regulate individual and vessel access to park waters to prevent the accidental introduction of injurious exotic aquatic nuisance species into park waters.

The NPS will use lists developed by other Federal agencies like the U.S. Fish and Wildlife Service and various State departments of natural resources to identify targeted prohibited species. The NPS may, however, develop its own lists based upon sound scientific research. Any species identified by the NPS will be listed and identified through the public notice process. Various States have active aquatic exotic species prevention programs and regularly identify and mark infested bodies of water. The NPS will, through its Resource Education programs, ensure that all park users are informed and warned about targeted species and the proper way to control their spread by decontaminating their vessels and associated gear. This proposed rule will bring the NPS into conformity with programs currently in place in several states.

DATES: Written comments will be accepted through August 23, 1996.

ADDRESSES: All comments should be addressed to: Superintendent, Great Lakes Systems Support Office, Midwest Field Area, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102. Attention: John Townsend.

FOR FURTHER INFORMATION CONTACT: John Townsend at the above address or by calling 402–221–3475.

SUPPLEMENTARY INFORMATION:

Background

The NPS is granted broad statutory authority under 16 U.S.C. Section 1 *et seq.* (National Park Service Organic Act) and 16 U.S.C. Sections 1a–2(h) to ''* * * regulate the use of the Federal areas known as national parks, monuments, and reservations * * * by such means and measures as conform to the fundamental purpose of the said parks * * * which purpose is to conserve the scenery and the natural and historic objects and the wildlife therein * * *''.

The *National Park Service Management Policies* (1988) provide overall direction in implementing the intent of this Congressional mandate and other applicable Federal legislation. The policy of the NPS regarding protection and management of natural resources is ''The National Park Service will manage the natural resources of the national park system to maintain, rehabilitate, and perpetuate their inherent integrity'' (Chapter 4:1). Where conflict arises between human use and resource protection, where the NPS has a ''reasonable basis to believe a resource is or would become impaired, the Park Service may, * * * otherwise place limitations on public use'' (Chapter 1:3).

The integrity and quality of many national park waters and aquatic ecosystems, and dependent economic values and infrastructure, are threatened by the introduction of a variety of injurious non-indigenous aquatic species, both flora and fauna. These exotic aquatic animals and plants cause irreparable harm to the core values and resources for which the National Park System was created and can impose costly economic impacts on businesses and government entities through loss of production time and detection, mitigation, remediation and control activities. It is estimated that six of the over 150 known exotic aquatic species found within United States waters have alone caused over $1.5 billion in damages since 1906 (U.S. Congress, Office of Technology Assessment).

One such example is the exotic zebra mussel (Dreissena polymorpha). The zebra mussel is a small, fresh water, filter feeding mollusk that attaches itself to any hard surface, human-made or natural. This species was accidently introduced into North American waters in 1986 and has since spread throughout the Great Lakes and into the major eastern and Midwestern river systems. The ecological and economic impacts of zebra mussels have been extensive. These include effects to other organism, water quality, water clarity, and disruption of native aquatic communities and impacts to navigational devices, municipal water systems, sewage treatment plants, utility power plants, marinas and recreational and commercial vessel owners.

The primary vector in the spread of the zebra mussel, like most aquatic exotic species, is by in-water or trailered vessel transport from infested to unifested waters. During the summer of 1995 zebra mussels were found on trailered vessels as far west as California. There is evidence that contaminated wet suits are also a vector for accidental introduction. There is no evidence that transport by naturals such as birds or aquatic wildlife has led to the establishment of viable zebra mussel populations.

Additionally, on November 29, 1990, Congress passed the ''Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990'' (16 U.S.C. 4701) to do just what this regulation proposes—to prevent introductions or control infestations of injurious non-indigenous aquatic nuisance species.

This proposed rule will allow the NPS to regulate individual and vessel access to park waters to prevent or minimize the risk of unintentional introduction of injurious non-indigenous aquatic species into park waters. Minimizing such risks is particularly important since once introduced and established, many exotic species are extremely costly and nearly impossible to eliminate. This proposed rule also prohibits the transportation, introduction or attempted introduction of injurious non-indigenous aquatic species into park waters.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking. The NPS will review all comments and consider making changes to the rule based upon analysis of the comments.

Drafting Information: The primary authors of this proposed rule are James A. Loach, Superintendent, Great Lakes System Support Office, Midwest Field Area Office; Brian R. Adams, Chief Ranger, St. Croix National Scenic Riverway; and Dennis Burnett, Washington Office of Ranger Activities, National Park Service.

Paperwork Reduction Act

This proposed rule does not contain collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior has determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). To the contrary, this rulemaking will lessen the possible economic impacts to businesses and industry should exotics like the zebra mussel become established in NPS waterways.

In fact, the NPS and other entities will incur substantially increased costs over time as a result of monitoring, mitigation, remediation and control activities if these rules are not implemented. These rules seek to prevent a growing problem by moving away from a reliance on both short and longer term, costly, and often environmentally unsound, control methods. Prevention appears to be the only cost effective approach. There is also the prospect that these regulations may have a positive secondary effect on local businesses and small entities providing cleaning and decontamination services to the public.

The NPS has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce non-compatible uses that may compromise the nature and characteristic of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent land owners or occupants.

Based on this determination, the regulation is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) has been prepared.

List of Subjects in 36 CFR Part 3

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

PART 3—BOATING AND WATER USE ACTIVITIES

1. The authority citation for Part 3 continues to read as follows:

Authority: 16 U.S.C. 1, 1a-2(h), 3.

2. Section 3.6 is amended by adding paragraphs (m) through (o) to read as follows:

§ 3.6 Prohibited operations.

* * * * *

(m) Entering by vessel, launching a vessel, operating a vessel, or knowingly allowing another person to enter, launch or operate a vessel, or attempting to do any of these activities, in NPS waters, when that vessel or the trailer or the

carrier of that vessel has been in water contaminated or infested with injurious non-indigenous aquatic nuisance species, except as provided in paragraghs (m)(1) and (m)(2).

(1) Vessels, trailers or other carriers of vessels entering NPS waters from contaminated waters will be cleaned using the technique specific to the aquatic nuisance species.

(2) The superintendent may allow for limited or restricted access to park waters under a permit system in accordance with the criteria and procedures of § 3.3 of this chapter.

(i) Violating a term or condition of a permit issued in accordance with § 3.3 is prohibited.

(ii) Violating a term or condition of a permit issued pursuant to § 3.3 of this chapter may also result in the suspension or revocation of the permit by the superintendent.

(3) For this section, an injurious non-indigenous aquatic nuisance species means a species that threatens the diversity or abundance of native species or the stability of an aquatic ecosystem, or that threatens the commercial, agricultural, aquacultural or recreational development dependent on such an ecosystem, and includes only those organisms that pose a substantial risk to native species and the development and infrastructure dependent upon such aquatic resources. Species include those listed by Federal, State or local agencies as injurious non-indigenous aquatic nuisance species.

(4) For this section, contaminated or infested waters means any waters supporting viable or reproducing populations of injurious non-indigenous aquatic nuance species as identified by any Federal, State, or local agency.

(5) For paragraph (m) of this section, vessel means every type or description of craft, including seaplanes on the water, used or capable of being used as a means of transportation on water, including a buoyant devise permitting or capable of free flotation.

(n) Transporting in any way, an injurious non-indigenous aquatic nuisance species on park waters or roads.

(o) Placing or dumping into park waters, or attempting to place or dump, bait containers, live wells or other water-holding devices that are or were filled with waters holding or contaminated by injurious non-indigenous aquatic nuisance species.

3. Section 3.23 is amended by adding paragraph (c) to read as follows:

§ 3.23 SCUBA and snorkeling.

* * * * *

(c) Using a wet suit or associated water use and diving equipment used in waters infested with injurious non-indigenous aquatic nuisance species prior to decontamination by a process appropriate to the nuisance species.

Dated: March 15, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–15973 Filed 6–21–96; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM–23–1–7101b; FRL–5500–8]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Supplement to the New Mexico State Implementation Plan To Control Air Pollution in Areas of Bernalillo County Designated Nonattainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve a revision to the New Mexico State Implementation Plan addressing nonattainment areas in Bernalillo County. The purpose of proposing to approve this revision is to update the narrative portion of the ''April 14, 1993, Supplement to the New Mexico State Implementation Plan to Control Air Pollution in Area(s) of Bernalillo County Designated Nonattainment'' (see the Federal Register published on December 21, 1993) to reflect EPA's approval for lifting the construction ban in Bernalillo County. In the final rules section of this Federal Register, EPA is approving the State's State Implementation Plan revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be postmarked by July 24, 1996.

ADDRESSES: Comments should be mailed to Jole C. Luehrs, Chief, Air Permits Section (6PD–R), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the State's petition and other information relevant to this action are available for inspection during normal hours at the following locations:

U.S. EPA, Region 6, Air Permits Section (6PD–R), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Air and Radiation Docket and Information Center, U.S. EPA, 401 M Street, SW, Washington, DC 20460.

City of Albuquerque, Environmental Health Department, One Civic Plaza, Albuquerque, New Mexico 87103.

Anyone wishing to review this petition at the Region 6 EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel R. Mitz, Air Permits Section (6PD–R), EPA Region 6, telephone (214) 665–8370.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final Rule which is located in the Rules Section of this Federal Register.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Nonattainment areas.

Dated: April 11, 1996.

Lynda F. Carroll,

Acting Regional Administrator.

[FR Doc. 96–16024 Filed 6–21–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CA 19–2–725–b; FRL–5511–5]

Approval and Promulgation of Implementation Plans; California—Mammoth Lakes Nonattainment Area; PM_{10}

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) submitted by the State of California for the purpose of bringing about attainment in the Mammoth Lakes Planning Area (MLPA) of the national ambient air quality standards (NAAQS) for particulate matter with an

aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). The ''moderate'' area SIP was submitted by the State to satisfy certain Federal requirements in the Clean Air Act (CAA) for an approvable nonattainment area PM_{10} plan for the MLPA.

The intended effect of proposing approval of this plan is to regulate emissions of PM_{10} in accordance with the requirements of the CAA, as amended in 1990.

DATES: Comments on this proposed rule must be received in writing by July 24, 1996.

ADDRESSES: Comments should be submitted to Stephanie Valentine (A–2–2) at U. S. Environmental Protection Agency, Region 9, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the State's submittal and other information are contained in the docket for this rulemaking. The docket is available for inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

California Air Resources Board, 2020 L Street, P.O. Box 2815, Sacramento, CA 95814.

Great Basin Unified Air Pollution Control District, 157 Short Street, Suite 6, Bishop, CA 93514.

FOR FURTHER INFORMATION CONTACT: Stephanie G. Valentine (A–2–2), U.S. Environmental Protection Agency, Region 9, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1178.

SUPPLEMENTARY INFORMATION: This document concerns the PM_{10} Plan for the Mammoth Lakes Planning Area, submitted to EPA on September 11, 1991 by the California Air Resources Board. For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 31, 1996.

Felicia Marcus,

Regional Administrator.

[FR Doc. 96–15906 Filed 6–21–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[TN–152–1–9636; FRL–5525–1]

Proposed Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On November 14, 1994, the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), submitted a maintenance plan and a request to redesignate the Middle Tennessee area from moderate nonattainment to attainment for ozone (O_3). Subsequently on August 9, 1995, and January 19, 1996, the State submitted supplementary information which included revised contingency measures and emission projections. The Middle Tennessee O_3 nonattainment area consists of Davidson, Rutherford, Sumner, Williamson, and Wilson Counties. Under the Clean Air Act, designations can be changed if sufficient data are available to warrant such changes. In this action, EPA is proposing to approve the State of Tennessee's submittal because it will meet the maintenance plan and redesignation requirements. The approved maintenance plan will become a federally enforceable part of Tennessee's State Implementation Plan (SIP) for the moderate nonattainment area. In this action, EPA is also proposing to approve the State of Tennessee's 1990 baseline emissions inventory because it meets EPA's requirements regarding the approval on baseline emission inventories. EPA has analyzed the Tennessee SIP and determined which requirements have been met and for which requirements further action is required. In the instances where further action is required, SIP revisions meeting those requirements must be fully approved in order for EPA to find that all the applicable requirements of the Clean Air Act as amended in 1990 (CAA) have been met. Thus, final approval of this redesignation is contingent upon the final approval of the additional SIP submittals described in Part 2. of the Supplementary Information.

DATES: To be considered, comments must be received by July 24, 1996.

ADDRESSES: Written comments on this action should be addressed to Steven M. Scofield, at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Tennessee Department of Environment and Conservation, 9th Floor, L & C Annex, 401 Church Street, Nashville, Tennessee, 37243–1531.

Bureau of Environmental Health Services, Metropolitan Health Department, 311—23rd Avenue, North, Nashville, Tennessee, 37203.

FOR FURTHER INFORMATION CONTACT: Steven M. Scofield, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555 extension 4189. Reference file TN–152–1–9636.

SUPPLEMENTARY INFORMATION: On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Under section 107(d)(1)(C), EPA designated the Middle Tennessee area as nonattainment by operation of law with respect to O_3 because the area was designated nonattainment immediately before November 15, 1990. The area was classified as moderate.

The moderate nonattainment area more recently has ambient monitoring data that show no violations of the O_3 NAAQS, during the period from 1992 through 1994. Therefore, in an effort to comply with the CAA and to ensure continued attainment of the NAAQS, on November 14, 1994, the State of Tennessee submitted an O_3 maintenance plan and requested redesignation of the area to attainment with respect to the O_3 NAAQS. On March 13, 1995, Region 4 determined that the information received from the State constituted a complete redesignation request under the general completeness criteria of 40 CFR part 51, appendix V, sections 2.1 and 2.2. Subsequently, on August 9, 1995, and January 19, 1996, the State submitted supplementary information which included revised contingency measures and emission projections.

The Tennessee redesignation request for the Middle Tennessee moderate O_3 nonattainment area meets the five requirements of section 107(d)(3)(E) for

redesignation to attainment. The following is a brief description of how the State of Tennessee has fulfilled each of these requirements. Because the maintenance plan is a critical element of the redesignation request, EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request.

1. The Area Must Have Attained the O_3 NAAQS

The State of Tennessee's request is based on an analysis of quality assured ambient air quality monitoring data, which is relevant to the maintenance plan and to the redesignation request. Most recent ambient air quality monitoring data for calendar year 1992 through calendar year 1994 show an expected exceedance rate of less than 1.0 per year of the O_3 NAAQS in the nonattainment area (See 40 CFR 50.9 and Appendix H). The area has continued to demonstrate attainment to date. Because the nonattainment area has complete quality-assured data showing no violations of the O_3 NAAQS over a consecutive three calendar year period, the area has met the first component of attainment of the O_3 NAAQS. In addition, there have been no ambient air exceedances in 1995 or to date in 1996 for O_3. The State of Tennessee has also met the second component of attainment of the O_3 NAAQS by committing to continue monitoring the moderate nonattainment area in accordance with 40 CFR part 58.

2. The Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

On August 13, 1980, and January 11, 1984, EPA fully approved Tennessee's SIP as meeting the requirements of section 110(a)(2) and part D of the 1977 CAA (45 FR 53809 and 49 FR 1342). The approved control strategy did not result in attainment of NAAQS for O_3 prior to the 1990 CAA. Additionally, the amended CAA revised section 182(a)(2)(A), 110(a)(2) and, under part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the CAA, EPA has reviewed the Tennessee SIP to ensure that it contains all measures due under the amended CAA prior to or at the time the State of Tennessee submitted its redesignation request.

Section 107(d)(3)(E) requires that, for an area to be redesignated, an area must have met all applicable requirements under section 110 and Part D. The EPA interprets section 107(d)(3)(E)(v) to mean that for a redesignation to be approved, the State must have met all requirements that applied to the subject area prior to or at the time of the submission of a complete redesignation request. Requirements of the CAA that come due subsequently continue to be applicable to the area at those later dates (see section 175A(c)) and, if the redesignation of the area is disapproved, the State remains obligated to fulfill those requirements.

A. Section 110 Requirements

Although section 110 was amended by the CAA, the Tennessee SIP for the moderate nonattainment area meets the requirements of amended section 110(a)(2). A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment SIP met these requirements. EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 110(a)(2).

B. Part D Requirements

Before the moderate nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 2 of part D establishes additional requirements for O_3 nonattainment areas classified under table 1 of section 181(a). As described in the General Preamble for the Implementation of title I, specific requirements of subpart 2 may override subpart 1's general provisions (57 FR 13501 (April 16, 1992)). The Middle Tennessee nonattainment area is classified as moderate (See 56 FR 56694, codified at 40 CFR 81.343). Therefore, in order to be redesignated to attainment, the State of Tennessee must meet the applicable requirements of subpart 1 of part D, specifically sections 172(c) and 176, and is also required to meet the applicable requirements of subpart 2 of part D, specifically sections 182(a) and (b).

a. Subpart 1 of Part D

Section 172(c) sets forth general requirements applicable to all nonattainment areas. Under section 172(b), the section 172(c) requirements are applicable as determined by the Administrator, but no later than 3 years after an area has been designated as nonattainment under the amended CAA. Furthermore, as noted above, some of these section 172(c) requirements are superseded by more specific requirements in subpart 2 of part D. In the case of the Tennessee nonattainment area, the State has satisfied all of the section 172(c) requirements necessary for the area to be redesignated upon the basis of the November 14, 1994, redesignation request.

EPA has determined that the section 172(c)(2) reasonable further progress (RFP) requirement (with parallel requirements for a moderate ozone nonattainment area under subpart 2 of part D, due November 15, 1993) was not applicable as the State of Tennessee submitted this redesignation request on November 14, 1994, which demonstrated that the Middle Tennessee area was monitoring attainment of the O_3 standard. Based on a memorandum dated May 10, 1995, from John S. Seitz, Director, Office of Air Quality Planning and Standards to the Regional Air Division Directors, entitled Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard, EPA determined on June 22, 1995, effective August 7, 1995, that the Middle Tennessee area had attained the O_3 standard and that RFP and 15 percent plan requirements do not apply to the area for so long as the area does not monitor any violations of the O_3 standard.

The section 172(c)(3) emissions inventory requirement has been met by the submission of the 1990 baseline inventory required under subpart 2 of part D, section 182(a)(1), which EPA is proposing to approve in this action.

The State of Tennessee has a fully-approved NSR program meeting the requirements of section 182(b)(1). Therefore, the section 172(c)(5) requirement has been met.

Section 176(c) of the CAA requires states to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable state SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act (''transportation conformity''), as well as to all other Federal actions (''general conformity''). Section 176 further provides that the conformity revisions to be submitted by states must be consistent with Federal conformity regulations that the CAA required EPA to promulgate. Congress provided for

the state revisions to be submitted one year after the date for promulgation of final EPA conformity regulations. When that date passed without such promulgation, EPA's General Preamble for the implementation of Title I informed states that its conformity regulations would establish a submittal date [see 57 FR 13498, 13557 (April 16, 1992)].

The EPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62188), and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that states adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. Pursuant to § 51.396 of the transportation conformity rule and § 51.851 of the general conformity rule, the State of Tennessee is required to submit SIP revisions containing transportation and general conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994 and December 1, 1994, respectively. Because the deadlines for these submittals had not come due at the time of the submission of the redesignation request, they are not applicable requirements under section 107(d)(3)(E)(V) and, thus, do not affect approval of this redesignation request.

b. Subpart 2 of Part D—Section 182

The CAA was amended on November 15, 1990, Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. EPA was required to classify O_3 nonattainment areas according to the severity of their problem. On November 6, 1991 (56 FR 56694), the Middle Tennessee area was designated as moderate O_3 nonattainment. Because the Middle Tennessee area is a moderate O_3 nonattainment area, it is required to have met the requirements of sections 182(a), (b), and (f) of the CAA. EPA has analyzed the SIP and determined which requirements have been met and for which requirements further action is required. In the instances where further action is required, SIP revisions meeting those requirements must be fully approved in order for EPA to find that all the applicable requirements of the CAA have been met. Thus, final approval of this redesignation is contingent upon the final approval of the additional SIP submittals described below.

(1) Section 182(a)(1)—Emissions Inventory

Section 182(a)(1) of the CAA required an inventory of all actual emissions from all sources, as described in section 172(c)(3) to be submitted by November 15, 1992. On November 15, 1993, the State submitted an emission inventory for the Middle Tennessee area. EPA is proposing to approve the inventory in this document. Final approval of this redesignation is contingent on final approval of the emissions inventory.

(2) Section 182(a)(2), 182(b)(2)—Reasonably Available Control Technology (RACT)

The 1990 CAA amended section 182(a)(2)(A), and Congress statutorily adopted the requirement that O_3 nonattainment areas correct their deficient RACT rules for O_3 (RACT Fix-ups). Areas designated nonattainment before amendment of the CAA and which retained that designation and were classified as marginal or above as of enactment are required to meet the RACT Fix-ups requirement. Under section 182(a)(2)(A), those areas were required by May 15, 1991, to correct RACT regulations as required under pre-amendment guidance.[1] The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. The Middle Tennessee area was previously subject to RACT requirements for ozone. Therefore, this area is subject to the RACT Fix-ups requirement and the May 15, 1991, deadline. The State submitted revisions to the Tennessee SIP addressing the RACT Fix-ups to EPA on June 25, 1992, and March 22, 1993. EPA approved these revisions on April 18, 1994 (59 FR 18310).

The 1990 CAA also amended section 182(b)(2) which required RACT on all major sources of VOCs for O_3 nonattainment areas designated moderate and above (RACT Catch-ups) by November 15, 1992. The RACT Catch-ups provision required the State to submit a revision to the SIP to implement RACT on: (1) Each category of VOC sources in the area covered by a control technique guideline (CTG) document issued between the enactment of the 1990 CAA and the date of attainment (which is not an applicable requirement for purposes of this redesignation since the due date for these rules is November 15, 1994, a date after the submission of the redesignation request); (2) all VOC sources in the area covered by any CTG issued before the date of the 1990 CAA; and (3) all other major stationary sources of VOCs that are located in the area.

Tennessee submitted SIP revisions to correct deficiencies in the VOC regulations to EPA on May 18, 1993. The approval of these SIP revisions, including several revisions that were conditionally approved, was published in the Federal Register on February 27, 1995 (60 FR 10504). The approval became effective on April 28, 1995. Action to give final approval of the Tennessee RACT Catch-up provisions must be taken at the time or prior to final approval of this redesignation.

(3) Section 182(a)(3)—Emissions Statements

Section 182(a)(3) of the CAA required that the SIP be revised by November 15, 1992, to require stationary sources of oxides of nitrogen (NO_x) and VOCs to provide the State with a statement showing actual emission each year. Tennessee submitted SIP revisions to EPA on May 18, 1993, regarding the VOC emissions statements that were conditionally approved on February 27, 1995, and a pre-hearing revision regarding the NO_X emissions statements on October 17, 1994. The State has officially submitted revisions for approval in the Tennessee SIP that will satisfy the NO_X and VOC emissions statements requirement upon approval under a separate action. Final action regarding the Tennessee Emissions Statements regulations must be taken at the time or prior to final approval of this redesignation. Approval of this redesignation is contingent upon approval of the emissions statements regulations.

(4) Section 182(b)(1)—15% Progress Plans

Section 182(b)(1) of the CAA required states to submit a revision to the SIP by November 15, 1993, to provide for VOC emission reductions by November 15, 1996, of at least 15% from baseline emissions accounting for any growth in emissions after the date of enactment of the CAA. The State submitted a plan on November 12, 1993, which was found to be incomplete by EPA on April 1, 1994. However, the State of Tennessee submitted this redesignation request on November 14, 1994, which demonstrated that the Middle Tennessee area was monitoring attainment of the O_3 standard. Based on

[1] Among other things, the pre-amendment guidance consists of the VOC RACT portions of the Post-87 policy, 52 FR 45044 (Nov. 24, 1987); the Bluebook, ''Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice'' (of which notice of availability was published in the Federal Register on May 25, 1988); and the existing Control Technology Guidelines (CTGs).

a memorandum dated May 10, 1995, from John S. Seitz, Director, Office of Air Quality Planning and Standards to the Regional Air Division Directors, entitled Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard, EPA determined on June 22, 1995, effective August 7, 1995, that the Middle Tennessee area had attained the O_3 standard and that RFP and 15 percent plan requirements do not apply to the area for so long as the area does not monitor any violations of the O_3 standard.

(5) Section 182(b)(1)—New Source Review (NSR)

The CAA required all classified nonattainment areas to meet several requirements regarding NSR, including provisions to ensure that increased emissions of VOCs compounds will not result from any new or major source modifications and a general offset rule. The State submitted a NSR rule on August 17, 1994, to incorporate VOC and NO_X permit review requirements for new and modified sources in Tennessee's O_3 nonattainment areas. The revised permit requirements meet new offset ratios and additional provisions for moderate O_3 nonattainment areas. EPA approved this rule on February 10, 1995 (60 FR 7913), giving Tennessee a fully approved NSR program. (EPA notes that under the policy announced in the memorandum, ''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' dated October 14, 1994, from Mary D. Nichols to Air Division Directors 1–10, approval of the NSR submittal is not necessarily required for approval of a redesignation.)

In addition, EPA provided comments regarding proposed revisions to Tennessee's prevention of significant deterioration (PSD) rule on April 25, 1994. However, the State has not officially submitted these revisions for approval in the Tennessee SIP. Final action regarding the Tennessee PSD rule must be taken at the time or prior to final approval of this redesignation. Approval of this redesignation is contingent upon approval of the PSD rule.

(6) Section 182(b)(3)—Stage II

Section 182(b)(3) of the CAA required moderate areas to implement Stage II gasoline vapor recovery systems unless and until EPA promulgated onboard vapor recovery (OBVR) regulations. On January 24, 1994, EPA promulgated the OBVR rule. As section 202(a)(6) of the CAA provides that once the rule is promulgated, moderate areas are no longer required to implement Stage II. Thus, the Stage II vapor recovery requirement of section 182(b)(3) is no longer an applicable requirement. However, Tennessee submitted Stage II vapor recovery rules to EPA which were approved on February 9, 1995, with an effective date of April 10, 1995.

(7) Section 182(b)(4)—Motor Vehicle Inspection and Maintenance (I/M)

The CAA required all moderate and above areas to revise the SIP to include provisions necessary to provide for a vehicle inspection and maintenance (I/M) program. The State has the required legal authority for I/M, and EPA approved the program on July 28, 1995, with an effective date of September 26, 1995.

(8) Section 182(f)—Oxides of Nitrogen (NO_X) Requirements

Section 182(f) of the CAA requires states with areas designated nonattainment for O_3 and classified as moderate and above to impose the same control requirements for major stationary sources of NO_X as apply to major stationary sources of volatile organic compounds (VOCs). These control requirements, NO_X RACT and NO_X NSR, were to be submitted to EPA in a SIP revision by November 15, 1992. Tennessee submitted a request for an exemption from the 182(f) requirements on March 21, 1995. EPA is in the process of approving this exemption. Final action regarding the Tennessee 182(f) exemption must be taken at the time or prior to final approval of this redesignation. Approval of this redesignation is contingent upon approval of the 182(f) exemption.

In addition, NO_X reductions were obtained from two sources prior to the Middle Tennessee area attaining the O_3 standard. The State must submit the permits for approval by EPA, as well as any other permits or regulations from which the area obtained reductions in order to attain the O_3 standard or project maintenance of the standard. Final action regarding the Tennessee NO_X permits and regulations must be taken at the time or prior to final approval of this redesignation. Approval of this redesignation is contingent upon approval of the NO_X permits and regulations.

3. The Area Has a Fully Approved SIP Under Section 110(k) of the CAA

Based on the approval of provisions under the pre-amended CAA and EPA's prior approval of SIP revisions under the amended CAA, EPA has determined that Tennessee will have a fully approved O_3 SIP under section 110(k) for the moderate nonattainment area if EPA approves SIP submissions regarding the emissions inventory, emissions statements, VOC RACT catch-ups, and NO_X 182(f) exemption, permits, and regulations. Final action will be taken prior to or at the same time as final approval of this redesignation.

4. The Air Quality Improvement Must Be Permanent and Enforceable

Several control measures have come into place since the Middle Tennessee nonattainment area violated the O_3 NAAQS. Of these control measures, the reduction of fuel volatility to 9.5 psi in 1989, and finally to 7.8 psi beginning with the summer of 1992, as measured by the Reid Vapor Pressure (RVP), and fleet turnover due to the Federal Motor Vehicle Control Program (FMVCP) produced the most significant decreases in VOC emissions. The reduction in VOC emissions due to the mobile source regulations from 1990 to 1994 was 27.14 tons per day (28.6%).

In association with its emission inventory discussed below, the State of Tennessee has demonstrated that actual enforceable emission reductions are responsible for the air quality improvement and that the VOC emissions in the base year are not artificially low due to local economic downturn. EPA finds that the combination of existing EPA-approved state and federal measures contribute to the permanence and enforceability of reduction in ambient O_3 levels that have allowed the area to attain the NAAQS.

5. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems.

In this document, EPA is proposing approval of the State of Tennessee's maintenance plan for the Middle Tennessee nonattainment area because

EPA finds that Tennessee's submittal meets the requirements of section 175A.

A. Emissions Inventory—Base Year Inventory

On November 15, 1993, the State of Tennessee submitted comprehensive inventories of VOC, NO_X, and CO emissions from the Middle Tennessee area. The inventories include biogenic, area, stationary, and mobile sources for 1990.

The State submittal contains the detailed inventory data and summaries by county and source category. Finally, this inventory was prepared in accordance with EPA guidance. However, Tennessee had not attained the O_3 standard during 1990. Therefore, 1994 will be used as the base year for this redesignation. A summary of the 1990 baseline inventories as well as the 1994 base year and projected maintenance year inventories is included in this document. This document proposes approval of the 1990 baseline inventory and the 1994 base year inventory for the Middle Tennessee area.

SUMMARY OF VOC EMISSIONS

[Tons per day]

	1990	1994	1996	1999	2002	2006
Point	45.87	41.48	38.34	40.98	43.60	47.08
Area	67.67	50.46	43.91	46.11	48.31	51.24
Non-Road	27.83	28.74	29.09	29.39	29.68	30.08
Mobile	94.77	67.63	56.27	53.43	52.90	53.17
Total	263.14	188.31	167.61	169.91	174.49	181.57

SUMMARY OF NO_X EMISSIONS

[Tons per day]

	1990	1994	1996	1999	2002	2006
Point	111.79	124.96	73.45	78.99	84.50	94.25
Area	15.12	14.56	15.03	15.78	16.54	17.54
Non-Road	29.24	30.19	30.67	31.44	32.20	33.22
Mobile	111.34	120.53	102.20	98.79	96.25	96.60
Total	267.49	290.24	221.35	225.00	229.31	241.61

SUMMARY OF CO EMISSIONS

[Tons per day]

	1990	1994	1996	1999	2002	2006
Point	20.43	21.54	22.12	23.13	24.13	25.43
Area	35.94	11.75	16.97	17.48	18.00	18.68
Non-Road	188.69	194.80	197.93	202.86	207.78	214.35
Mobile	720.68	614.24	458.63	413.08	401.31	407.97
Total	965.74	842.33	695.65	656.55	651.22	666.43

B. Demonstration of Maintenance—Projected Inventories

Total VOC and NO_X emissions were projected from 1990 out to 2006, with interim years of 1994, 1996, 1999, and 2002. These projected inventories were prepared in accordance with EPA guidance. The projections show that VOC and NO_X emissions are not expected to exceed the level of the base year inventory during this time period.

C. Verification of Continued Attainment

Continued attainment of the O_3 NAAQS in the Middle Tennessee area depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. The State has also committed to complete periodic inventories of VOC and NO_X emissions every five years. The contingency plan for the Middle Tennessee area is triggered by three indicators; a violation of the O_3 NAAQS, the monitored ambient levels of O_3 exceed 0.12 parts per million (ppm) more than once in any year at any site in the nonattainment area, or the level of total VOC or NO_X emissions has increased above the attainment level in 1994 by ten percent or more.

D. Contingency Plan

The level of VOC and NO_X emissions in the Middle Tennessee area will largely determine its ability to stay in compliance with the O_3 NAAQS in the future. Despite the State's best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, Tennessee has provided contingency measures with a schedule for implementation in the event of a future O_3 air quality problem. In the case of a violation of the O_3 NAAQS, the plan contains a contingency to implement additional control measures such as lower Reid Vapor Pressure for gasoline, lowering the threshold of applicability for major stationary VOC and NO_X sources from 100 tons per year (tpy) to 50 tpy, and application of RACT on sources covered by new CTG categories. A complete description of these contingency measures and their triggers can be found in the State's submittal. EPA finds that the contingency measures provided in the State submittal meet the requirements of section 175A(d) of the CAA.

E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, the State of Tennessee has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such

revised SIP will provide for maintenance for an additional ten years.

Proposed Action

EPA proposes approval of the State of Tennessee's request to redesignate to attainment the Middle Tennessee O3 nonattainment area, and the Middle Tennessee and maintenance plan contingent upon a full and final approval of the outstanding requirements discussed above (emissions inventory, RACT catch-ups, emissions statements, and NO_X requirements). EPA also proposes to approve the 1990 baseline inventory and the 1994 base year inventory for the Middle Tennessee nonattainment area.

The OMB has exempted these actions from review under Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 107(d)(3)(E) of the CAA. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. EPA has examined whether the rules being proposed for approval by this action would impose any new requirements. Since such sources are already subject to these regulations under State law, no new requirements are imposed by this proposed approval. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action, and therefore there will be no significant impact on a substantial number of small entities.

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: June 13, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 96–16022 Filed 6–21–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 70

[MI001; FRL–5524–6]

Proposed Interim Approval of the Operating Permits Program; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes interim approval of the Operating Permits Program submitted by the State of Michigan for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources, with the exception of sources on Indian lands.

DATES: Comments on this proposed action must be received in writing by July 24, 1996.

ADDRESSES: Written comments should be addressed to: Robert Miller, Chief, Permits and Grants Section (AR–18J), EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: EPA Region 5, Air and Radiation Division (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Beth Valenziano, Permits and Grants Section (AR–18J), EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–2703. E-mail address: valenziano.beth@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the Clean Air Act (Act) as amended (1990), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of State operating permits programs. See 57 FR 32250 (July 21, 1992). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. If the State's submission is materially changed during the 1-year review period, 40 CFR 70.4(e)(2) allows EPA to extend the review period for no more than 1 year following receipt of the additional material. The EPA received material changes to Michigan's May 16, 1995 submittal on July 20, 1995, and therefore considers EPA's review period to begin from the latter date.

The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

II. Proposed Action and Implications

A. Analysis of State Submission

1. Support Materials

The EPA received Michigan's title V operating permits program from the governor's designee, the Director of the Michigan Department of Natural Resources (MDNR) on May 16, 1995. The EPA received supplemental program submittals from the Acting Chief of the Air Quality Division, MDNR, on July 20, 1995, and October 6, 1995. The EPA also received supplemental program submittals from the Chief of the Air Quality Division of the newly formed Michigan Department of Environmental Quality on November 7, 1995 and January 8, 1996. Based on the May 16, 1995 and the July 20, 1995 submittals, EPA deemed Michigan's program complete in a letter to the MDNR Director dated August 16, 1995. Together, Michigan's program submittals contain all required elements of 40 CFR 70.4, including a description of Michigan's operating permits program, permitting program documentation, and the Attorney General's legal opinion that the laws of the State of Michigan provide adequate authority to carry out all aspects of the program required by the Act.

Michigan's November 7, 1995 supplement to its title V program submittal included Governor John Engler's Executive Order No. 1995–18. This executive order, effective October 1, 1995, created the Michigan Department of Environmental Quality (MDEQ) and transferred the authority for implementation of title V from MDNR to MDEQ. Michigan's November 7, 1995 supplemental submittal stated that this administrative transfer does not affect Michigan's part 70 implementation program.

Section 1.1 of Michigan's program description states that MDNR (now MDEQ) is responsible for implementing and administering the title V program for all geographical areas of the State. The submittal includes no further discussion of any basis under which MDEQ might assert jurisdiction over sources on tribal lands.

Because MDEQ has not demonstrated, consistent with applicable principles of Indian law and Federal Indian policies, legal authority to regulate sources on tribal lands, the proposed interim approval of Michigan's operating permits program will not extend to lands within the exterior boundaries of any Indian reservation in the State of Michigan.[1] Title V sources located within the exterior boundaries of Indian reservations in Michigan will be subject to either the Federal operating permits program, to be promulgated at 40 CFR part 71, or to a tribal operating permits program approved pursuant to title V and the regulations that will be promulgated under section 301(d) of the Act. The section 301(d) regulations will authorize EPA to treat tribes in the same manner as States for appropriate Act provisions.[2]

2. Regulations and Program Implementation

Michigan's operating permits program, including the operating permits program regulations (found in Michigan's administrative rules for air pollution control, R 336.1101 et. seq.) substantially meet the requirements of 40 CFR part 70, including: sections 70.2 and 70.3 with respect to applicability; section 70.5 with respect to application forms, completeness requirements, and criteria for defining insignificant activities; sections 70.4, 70.5, and 70.6 with respect to permit content (including operational flexibility); sections 70.7 and 70.8 with respect to permit processing requirements (including minor permit modifications and public participation); and section 70.11 with respect to enforcement authority.

For a detailed analysis of Michigan's program submittal, please refer to the Technical Support Document (TSD) for this proposed action, which is available in the informal docket at the address noted above. The TSD shows that all operating permits program requirements of title V of the Act, 40 CFR part 70, and relevant guidance were met by Michigan's submittal, with the exception of those requirements described in subpart II.B. below.

a. Delegation of State Program to Local Governments. Section 324.5523 of Michigan's Natural Resources and Environmental Protection Act (NREPA) provides the authority to delegate the State's title V operating permits program to certain county governments. MDEQ acknowledges in the State's program submittal that the Wayne County Department of Environment, Air Quality Management Division, intends to seek delegation of the State's title V program, and that a program revision to EPA may be necessary to address any such delegation.

b. Definition of Potential to Emit. The Michigan definition of ''potential to emit'' in R 336.1116(m) provides that physical and operational limits on a source's capacity can be considered in determining ''potential to emit, '' provided that such limits are ''legally enforceable. '' The 40 CFR 70.2 definition of ''potential to emit'' requires such limits to be federally enforceable.

Although two recent court cases have challenged the ''federally enforceable'' requirement in other Act programs, the provision is still required by part 70.

The EPA issued a memorandum on January 22, 1996 entitled ''Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit'' that addresses the court cases and their effect on the Act's programs. In response to the court cases (and a pending challenge to the part 70 ''potential to emit'' requirements), the memorandum also states EPA's intention to propose rulemaking actions in the spring of 1996 that would address the Federal enforceability issue as it relates to title V and other Act programs. At this time, however, the title V Federal enforceability requirements remain unaffected, and therefore EPA is proposing that the State revise its definition to include the Federal enforceability requirement in its ''potential to emit'' definition as a condition of full approval.

This interim approval condition does not affect the State's ability to utilize the January 25, 1995 EPA memorandum entitled, ''Options for Limiting the Potential to Emit (PTE) of a Stationary Source under Section 112 and Title V of the Clean Air Act (Act), ''[3] which provides a transition policy through January 25, 1997 for establishing federally enforceable mechanisms for limiting PTE. In addition, this issue would no longer be a condition for full approval if the final EPA rulemaking referred to above were to no longer require Federal enforceability in limiting ''potential to emit'' as part of the title V program. After EPA finalizes its rulemaking on this issue, it will work with Michigan to assure that the State's regulations are consistent with national requirements.

c. Use of Old Permits to Limit Potential to Emit. R 336.1209 provides a mechanism for sources to limit their potential to emit through certain existing permits, and therefore avoid being subject to the title V operating permit program. The EPA notes that existing State permits can establish

[1] This is not a determination that MDEQ could not possibly demonstrate jurisdiction over sources within the exterior boundaries of Indian reservations in Michigan. However, no such showing has been made.

[2] Tribes may also have inherent sovereign authority to regulate air pollutants from sources on tribal lands.

[3] As amended by the January 22, 1996 interim policy memorandum.

federally enforceable limits on potential to emit to the extent that the permits have been issued pursuant to an approved State Implementation Plan (SIP), and are also practically enforceable. The EPA understands that Michigan will be submitting R 336.1209 as a SIP revision to ensure that such permits are federally enforceable. For additional information, see the January 25, 1995 and the January 22, 1996 EPA memoranda referenced in subpart II.A.2.b. above.

d. Definition of Title I Modification. 40 CFR part 70 uses the term ''modifications under any provision of title I of the Act'' in establishing requirements for operational flexibility, off permit provisions, and minor permit modifications. Because this term was not specifically defined in Federal regulations, there have been differing interpretations regarding whether the term includes or excludes modifications under States' minor New Source Review (NSR) Programs. The Michigan regulations use this term in addressing the State's operational flexibility [R 336.1215(2)], off permit [R 336.1215(3)], minor permit modification [R 336.1216(2)], and significant modification [R 336.1216(3)] provisions. In addition, the State's minor permit modification provisions specifically exclude minor State NSR modifications in R 336.1216(2)(a)(v), which is the State's interpretation of 40 CFR 70.7(e)(2)(i)(A)(5).

In an August 29, 1994 rulemaking proposal, EPA explained its view that ''modifications under any provision of title I of the Act'' include minor NSR. However, EPA solicited public comment on whether the phrase should be interpreted to mean literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under title I of the Act. 59 FR 44572. This would include State NSR programs approved by EPA as part of the SIP under section 110(a)(2)(C) of the Act.

The EPA has not yet taken final action on the August 29, 1994 proposal. However, in response to public comment on that proposal, EPA has decided that the definition of ''modifications under any provision of title I of the Act'' is best interpreted as not including changes reviewed under minor NSR programs. This decision was included in the supplemental 40 CFR part 70 rulemaking proposal published on August 31, 1995. 60 FR 45545. Therefore, Michigan's interpretation of this term in its minor permit modification provisions is consistent with the requirements of part 70.

e. Research and Development Activities. R 336.1211(3) provides that process and process equipment which is used exclusively for research and development (R&D), and that is located on the same contiguous site as other process or process equipment used for manufacturing a product shall be treated as a separate source for purposes of determining operating permit program applicability. The Michigan regulations define R&D activities in R 336.1283, and specifically exclude activities that include the production of a product for sale, unless such sale is incidental to the process.

The EPA stated in the preamble to the final part 70 rule that ''in many cases States will have the flexibility to treat an R&D facility * * * as though it were a separate source, and [the R&D facility] would then be required to have a title V permit only if the R&D facility itself would be a major source.'' 57 FR 32264 and 32269. Read consistently with the major source definition in 40 CFR 70.2, this statement means that separate source treatment would occur only in situations where the co-located R&D portion of a source has its own two-digit Standard Industrial Classification code and is not a support facility. As explained in the supplemental proposal to revise part 70, EPA believes that R&D should be treated as having its own industrial grouping for purposes of determining major source status, and has proposed to revise 40 CFR part 70 accordingly. 60 FR 45556–45558.

It is important to note that separate treatment will not exempt R&D facilities in all cases. Some R&D activities may still be subject to permitting because they are either individually major or are a support facility that makes significant contributions to the product of a co-located major facility. The support facility test dictates that, even where there are two or more industrial groupings at a commonly owned facility, these groupings should be considered together if the output of one is more than 50 percent devoted to support of another. Although Michigan's program does not specifically reference the support facility test for R&D activities, EPA expects that such a test will be applied in making major source applicability determinations as established under the NSR program and continued under title V.

f. Insignificant Activities. Michigan's insignificant activities rule, R 336.1212(1), lists various activities that are excluded from calculations of potential to emit for purposes of determining whether a source is major. The part 70 rule does not provide for such an exception to major source determinations. Although the listed activities might qualify as ''insignificant'' under 40 CFR 70.5(c) or even ''trivial'' (as described in EPA's ''white paper'' on permit applications), these concepts relate to the need to describe activities in permit applications, and not to whether such activities need to be considered in a major source determination. Major source determinations are intended to be based on the potential impact of a source, as measured by its potential to emit, and not merely on those activities at the source which have historically been regulated. In addition, it should be noted that any emissions from these units can have the same effect on public health and the environment as similar amounts from the regulated emissions units at the plant. The EPA is therefore proposing to require the State to revise its regulations to delete these exemptions from major source determinations as a condition of full approval. This interim approval condition does not apply to the State's use of R 336.1212(1) as an insignificant activities list pursuant to 40 CFR 70.5(c).

The EPA does agree with the concern underlying these provisions, that significant resources not be expended on calculation of emissions from activities such as these which normally do not implicate clean air regulations. The EPA expects that emissions from activities such as those exempted by R 336.1212(1) would only be examined where those emissions might actually impact whether the source is major. The EPA expects that, where EPA has not spoken to this issue precisely, sources will exercise their judgment (as guided by the permitting authority) in deciding the rigor of analysis appropriate to calculate PTE for different insignificant activities at the source. For example, a rough estimate based on engineering judgment may be all that is necessary. The EPA believes that following such a ''rule of reason'' approach should alleviate the concerns underlying the State's exemptions.

g. Source Category Limited Interim Approval. Michigan's permit fee program relies on a 4 year initial permit issuance schedule to demonstrate that the fees are sufficient to cover the State's operating permit program costs. Because of this, the State has requested that EPA approve a 4 year initial permit issuance schedule under source category limited interim approval. See the EPA guidance memorandum entitled ''Interim Title V Program Approvals,'' signed by John S. Seitz, Director of EPA's Office of Air Quality

Planning and Standards, August 2, 1993. In accordance with this guidance, Michigan's program submittal demonstrates compelling reasons why the State cannot permit initial sources in 3 years, including a short term funding deficit that is eliminated under a 4 year permit issuance schedule, a large and complex source population, and an exceptional ramp up workload caused primarily by the State never having implemented an operating permit program similar to the title V program. The State also demonstrates that its proposed 4 year issuance schedule substantially meets the requirements of 40 CFR part 70 by permitting 60 percent of the title V sources and 80 percent of the emissions during the first 3 years of the program.

However, EPA cannot grant Michigan source category limited interim approval until after Michigan finalizes revisions to its permit issuance schedule regulation [R 336.1210(13)]. This regulation currently requires a 3 year issuance schedule. In other words, because the State's regulations currently meet the 40 CFR 70.4(b)(11)(ii) requirement to issue initial permits in 3 years, source category limited interim approval is not warranted. However, because EPA recognizes MDEQ's proposed 4 year permit issuance schedule for the purposes of determining fee schedule sufficiency, EPA may grant source category limited interim approval to the State after it revises its regulations to incorporate a 4 year permit issuance schedule, provided that the State continues to meet the requirements for source category limited interim approval. Therefore, EPA is proposing full approval of the State's permit issuance schedule. In the alternative, EPA is proposing source category limited interim approval, provided: (1) The State finalizes regulatory revisions to its permit issuance schedule that are consistent with the current draft revisions, and (2) the State program continues to meet the requirements for source category limited interim approval outlined in the August 2, 1993 guidance.

h. Startup, Shutdown, and Malfunction Provisions. R 336.1912, R 336.1913, and R 336.1914 include provisions relating to startups, shutdowns, and malfunctions (SSM) of sources. The EPA reviewed these regulations as a part of Michigan's title V program to determine whether these rules affect the State's ability to meet the requirements of 40 CFR 70.4(b)(3)(i). This provision requires that a title V program must have the authority to issue permits and assure compliance with all applicable requirements, including the requirements of the title V program, by all part 70 sources.

The Michigan SSM regulations provide an affirmative defense from violations of permit conditions which occur during SSM, provided that sources meet the requirements in these State rules. These requirements include the implementation of written preventative maintenance and malfunction abatement plans and other operating, recordkeeping, and reporting requirements. Michigan's title V Attorney General's opinion acknowledges that the rules establish an affirmative defense for certain violations. Structured as they are, the SSM provisions cannot be characterized as being based on enforcement discretion.

The only affirmative defense allowed in the title V regulations (other than any defense or other enforcement relief provided for in the applicable requirements themselves) is the emergency defense provisions in 40 CFR 70.6(g). The emergency defense is available only for exceedances of technology based emission limitations attributable to an emergency, as defined in 40 CFR 70.6(g)(1). The Michigan SSM affirmative defense is broader than the emergency defense in these two respects. First, the Michigan defense extends to exceedances beyond emergency situations, and applies to exceedances caused by startups, shutdowns, and malfunctions. Second, the Michigan defense applies to exceedances of any emission standard and any violation of a continuous emission, parametric monitoring, or automated recordkeeping requirement. In contrast, the emergency defense may only apply to exceedances of technology based emission limitations. Because Michigan's SSM affirmative defense is broader than the defense provided by part 70, the State does not have the authority to issue permits and assure compliance with all applicable requirements, as required by 40 CFR 70.4(b)(3)(i). Therefore, EPA is proposing that Michigan revise its SSM regulations to be consistent with the affirmative defense in 40 CFR 70.6(g) as a condition of full approval.

The EPA notes that Michigan's SSM regulations contain certain provisions similar to certain SSM operating requirements found in 40 CFR part 63 (general provisions for National Emission Standards for Hazardous Air Pollutants, section 112), 40 CFR part 60 (general provisions for New Source Performance Standards, section 111), and EPA's SIP policy regarding treatment of SSM. See EPA's policy memorandum dated February 15, 1983 from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation entitled ''Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions''. However, these provisions of the part 60 and 63 regulations do not apply uniformly to all Federal standards, and the 1983 policy does not establish an affirmative defense from violations caused by SSM conditions.

The EPA may consider alternative approaches for resolving this condition for full approval, such as an approach that relies on enforcement discretion (see the February 15, 1983 Bennett memorandum), and is willing to work with the State as necessary. There may be various ways in which to structure such an enforcement discretion approach, and EPA will not attempt to provide detailed guidance in this document. However, EPA notes that certain issues would have to be addressed by the State if it were to craft such an approach using the current State rule as a starting point. Among these, the definition of ''malfunction'' in R 336.1113(d) does not limit malfunctions to failures that are ''infrequent'' and ''not reasonably preventable'', and is therefore broader than the Federal definition in 40 CFR 60.2 and 63.2. The State's air pollution control bypass provisions in R 336.1913(3)(b) and R 336.1914(4)(b) are broader than that provided by the Act. See the February 15, 1983 Bennett memorandum. The alternate emission limitations for startups and shutdowns in R 336.1914(4)(d) would allow relaxations of Act requirements, including NSR limitations, New Source Performance Standards, toxics requirements (NESHAP, MACT), etc. Finally, the State SSM regulations provide no authority for MDEQ to review and require revisions to a source's written emission minimization plan for normal or usual startups and shutdowns. Such authority is appropriate to ensure that operating practices for startups and shutdowns meet good engineering practice for minimizing emissions, similar to the authority R 336.1911 currently provides for State review and revision of written preventative maintenance and malfunction abatement plans.

i. Environmental Audit Privilege and Immunity Law. Sections 502(b)(5) (A) and (E) of the Act require that approvable State title V programs must have adequate authority to assure that sources comply with all applicable Act requirements, as well as the authority to enforce permits and recover minimum civil penalties and appropriate criminal penalties. In addition, part 70 explicitly

requires States to have certain enforcement authorities, including the authority to seek injunctive relief to enjoin a violation, to bring suit to restrain persons where a facility is posing an imminent and substantial endangerment to public health or welfare, and to recover appropriate criminal and civil penalties. Section 113(e) of the Act sets forth penalty factors for EPA or a court to consider in assessing penalties for civil or criminal violations of the Act, factors which necessarily apply to penalties for violations of title V permits. The EPA is concerned about the potential impact of some State audit privilege and immunity laws on the ability of the States to enforce Federal requirements, including those under title V of the Act. Upon review and consideration of the statutory and regulatory provisions discussed above, EPA issued guidance on April 5, 1996, entitled ''Effect of Audit Immunity/Privilege Laws on States' Ability to Enforce Title V Requirements''. This guidance outlines certain elements of the State audit immunity and privilege laws which, in EPA's view, may so hamper the State's ability to enforce as to render the Agency unable to approve the title V operating permit program. The guidance is consistent with EPA's December 22, 1995 audit policy, ''Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations''. 60 FR 66706.

On March 18, 1996, Michigan Governor John Engler signed the State's Environmental Audit Privilege and Immunity Law, part 148 of Michigan's Natural Resources and Environmental Protection Act (NREPA). This law provides that sources can hold confidential broad categories of information contained in a voluntary environmental audit report. The law also provides sources and persons immunity from certain State civil and criminal penalties for violations discovered through an environmental self audit, provided the violations are promptly reported and corrected.

In the April 5, 1996 memorandum referenced above, EPA set out specific authorities, based upon the requirements of 40 CFR 70.11, that cannot be affected by State privilege and immunity laws if a State is to receive full approval of its title V program. The EPA has identified several sections of Michigan's privilege and immunity law, described below, which appear to conflict with the requirements of part 70.

Section 14802 of Michigan's Environmental Audit Privilege and Immunity Law provides for the protection of factual data disclosed during an environmental audit. In conjunction with the definition of ''environmental audit'' and ''environmental audit report'' contained in section 14801, Michigan's audit privilege is so broad that it may be interpreted as restricting access to data and preventing testimony which is necessary to determine whether a civil or criminal violation has occurred or is imminent. Similarly, the broad language of section 14809 may be interpreted as prohibiting the State from assessing civil penalties for violations of regulations, permits, consent orders or agreements; violations which reflect a parent company's pattern of violations at various facilities; and violations which result in serious harm or imminent and substantial endangerment. In addition, section 14809 appears to allow sources to retain economic benefit from a violation, even if substantial or deliberately obtained. Although section 14802 appears to contain several exemptions from the otherwise broad scope of the privilege, EPA is unable to determine the extent to which the exemption limits the application of the privilege provisions. Furthermore, EPA does not believe that the section 14802 exemption applies to any portion of the penalty immunity contained in section 14809.

For these reasons, EPA believes that Michigan's privilege and immunity law affects the State's authority to assure compliance with part 70 permits and the requirements of the operating permit program [40 CFR 70.4(b)(3)(i)], as well as the authority to enforce permits and the requirement to obtain a permit [40 CFR 70.4(b)(3)(vii)]. In addition, EPA believes that the law affects Michigan's authority to recover civil penalties in accordance with 40 CFR 70.11(a)(3)(i). Therefore, EPA is proposing that Michigan must revise its privilege and immunity law, part 148 of NREPA, to ensure that the State meets these title V enforcement requirements as a condition of full approval. The EPA is also proposing that Michigan must submit a revised title V Attorney General's opinion that addresses the concerns listed above, and certifies that the State title V program meets the enforcement requirements of 40 CFR 70.4(b)(3)(i), 40 CFR 70.4(b)(3)(vii), and 40 CFR 70.11(a)(3)(i) as a condition of full approval.

The EPA acknowledges that Michigan may have a different interpretation of the provisions in the State's privilege and immunity law. If Michigan believes that its current law does not affect the part 70 enforcement requirements addressed above, Michigan need only submit a revised title V Attorney General's opinion certifying that the State title V program meets the enforcement requirements of 40 CFR 70.4(b)(3)(i), 40 CFR 70.4(b)(3)(vii), and 40 CFR 70.11(a)(3)(i) as a condition of full approval. The Attorney General's opinion must also specifically address why EPA's interim approval provision requiring revisions to the currently enacted law is not valid.

To further ensure that Michigan's privilege and immunity law does not affect other requirements of the title V program, EPA believes that it is also necessary for the State to submit a supplemental Attorney General's opinion as a condition of full approval. This supplemental Attorney General's opinion must certify that any other title V requirements that may be affected by the privilege and immunity law are met, including: Michigan's authority to bring suit to restrain any person from engaging in any activity in violation of a permit that is presenting an imminent and substantial endangerment [40 CFR 70.11(a)(1)]; Michigan's authority to seek injunctive relief to enjoin any violation of any program requirement, including permit conditions [40 CFR 70.11(a)(2)]; Michigan's authority to recover criminal fines [40 CFR 70.11(a)(3) (ii) and (iii)]; and the requirement that the burden of proof for establishing civil and criminal violations is no greater than the burden of proof required under the Act [40 CFR 70.11(b)]. The EPA intends to work with Michigan to ensure that the supplemental Attorney General's opinion specifically addresses all potential areas of concern regarding the State's privilege and immunity law.

3. Permit Fee Demonstration

Michigan's operating permits program fee schedule is established in section 324.5522, NREPA. The State's program submittal includes a detailed demonstration that Michigan's fee schedule is sufficient to cover the State's operating permit program costs. Because the sufficiency of the fee schedule is based on a 4 year initial permit issuance schedule, Michigan has requested that EPA approve a 4 year initial permit issuance schedule under source category limited interim approval (see the discussion on source category limited interim approval in subpart II.A.2.g. above).

Michigan's fee schedule consists of an annual fee equal to a facility charge plus an emissions charge. The facility charge is $2,500.00 for major sources of criteria pollutants, and $1,000.00 for major sources of hazardous air pollutants. The emissions charge is $25.00 per ton of

actual emissions, with a facility cap of 4,000 tons. Sources with total actual emissions less than 4,000 tons have a 1,000 ton per pollutant cap.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority for Section 112 Implementation. Michigan has demonstrated in its title V program submittal adequate legal authority to implement and enforce all section 112 toxics requirements through the title V permit. This legal authority is contained in Michigan's enabling legislation and in regulatory provisions that define ''applicable requirements'' and provide that the permit must incorporate all applicable requirements. The EPA has determined that this legal authority is sufficient to allow Michigan to issue permits to part 70 sources that assure compliance with all section 112 requirements.

The EPA is interpreting the above legal authority to mean that Michigan is able to carry out all section 112 activities for part 70 sources. For further rationale on this interpretation, please refer to the TSD for this proposed action.

b. Implementation of Section 112(g). Section 112(g) of the Act requires States to issue case-by-case Maximum Achievable Control Technology (MACT) determinations to sources that modify, construct, or reconstruct, if EPA has not established MACT for that particular source category. According to the interpretive notice published in the Federal Register on February 14, 1995, the requirements of section 112(g) will not become effective until after EPA has promulgated a regulation addressing that provision. The notice sets forth in detail the rationale for this interpretation. See 60 FR 8333. At the time of Michigan's program submittal and EPA's subsequent review period, EPA has not promulgated a Federal regulation containing the specific requirements of section 112(g).

The section 112(g) interpretative notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow States time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Michigan must be able to implement section 112(g) during the transition period between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations.

The EPA is aware that Michigan lacks a program designed specifically to implement section 112(g). However, Michigan does have a preconstruction review program that can serve as an adequate implementation vehicle during the transition period. Therefore, EPA is proposing approval under title V and part 70, of the use of Michigan's preconstruction permit program as the procedural mechanism for establishing federally enforceable case-by-case MACT emission limits for hazardous air pollutants (HAP) during the transition period. However, since the approval is for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. This proposed approval is limited solely to the issuance of federally enforceable HAP emission limits to comply with the requirements of section 112(g), and is not an approval under section 110 of the Act.

This approval is for an interim period only, until such time as the State adopts regulations consistent with any regulations promulgated by EPA to implement section 112(g). Accordingly, EPA is proposing to limit the duration of this approval to a reasonable time following promulgation of section 112(g) regulations so that Michigan, acting expeditiously, will be able to adopt regulations consistent with the section 112(g) regulations. The EPA is proposing here to limit the duration of this approval to 18 months following promulgation by EPA of section 112(g) regulations.

Michigan's construction permit regulations [R 336.1205(2)] assume that section 112(g) authority is delegated to the State by EPA. The implementation of section 112(g) by the State for sources subject to title V is a requirement for approval of the State's title V program, and is therefore not a delegated program. To address the requirements in R 336.1205(2), the State should refer instead to EPA's forthcoming final rulemaking on Michigan's title V program and to the section 112(g) implementation requirements to be promulgated in the final section 112(g) regulations.

c. Program for Straight Delegation of Section 112 Standards. Requirements for operating permits program approval, specified in 40 CFR 70.4(b), also address section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70.

Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of Michigan's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated. Because Michigan has the authority under section 324.5506(6), NREPA, to include any conditions in an operating permit that are necessary to assure compliance with the Act (including section 112 requirements), EPA proposes to approve the delegation of section 112 standards through straight delegation. The details of this delegation mechanism will be set forth in a Memorandum of Agreement between Michigan and EPA. The State of Michigan requested delegation of section 112 standards in a letter from Russell J. Harding, Director, MDEQ, dated October 12, 1995. This proposed approval of Michigan's program for delegations applies to both existing and future standards, but is limited to sources covered by the part 70 program.

d. Implementation of Title IV. Michigan's operating permits program contains adequate authority to issue permits that include the requirements of the title IV acid rain program. The State has incorporated the requirements of 40 CFR part 72 by reference in R 336.1299(d).

B. Options for Approval/Disapproval and Implications

The EPA is proposing to grant interim approval to the State of Michigan's operating permits program received on May 16, 1995, July 20, 1995, October 6, 1995, November 7, 1995, and January 8, 1996. This interim approval of Michigan's operating permits program applies to all title V sources, with the exception of any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.,* 59 FR 55813, 55815–18 (Nov. 9, 1994). The term ''Indian Tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' *See* section 302(r) of the Act; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

1. Proposal in the Alternative

The EPA proposes full approval of the State's 3 year initial permit issuance schedule. In the alternative, EPA proposes source category limited interim approval of the State's 4 year permit issuance schedule, provided: (1) the State finalizes regulatory revisions to its permit issuance schedule that are consistent with the State's November 7, 1995 supplemental title V program submittal, and (2) the State program continues to meet the requirements for source category limited interim approval.

2. Proposed Interim Approval Issues

If interim approval of Michigan's operating permits program is promulgated as proposed today, the State must make the following changes to receive full approval.

a. Revise the definition of ''potential to emit'' in R 336.1116(m) to require that physical and operational limits on a source's capacity must be federally enforceable. Federal enforceability is required by the definition of ''potential to emit'' in 40 CFR 70.2. However, this issue would cease to be a condition of full approval if EPA revises the 40 CFR 70.2 definition to no longer require Federal enforceability in limiting ''potential to emit.''

b. Revise the definition of ''schedule of compliance'' in R 336.1119(a) to provide that the schedule of compliance for sources that are not in compliance shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. This provision is required by 40 CFR 70.5(c)(8)(iii)(C).

c. Revise the definition of ''stationary source'' in R 336.1119(q) to provide that the definition includes all of the process and process equipment which are located at one or more *contiguous or* adjacent properties. The emphasized phrase is not currently included in the State regulation. This provision is required in the definition of ''major source'' in 40 CFR 70.2.

d. Revise R 336.1211(l) to provide that nonmajor solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act are subject to the title V permits program. The permitting deferral for nonmajor section 111 sources in 40 CFR 70.3(b) does not apply to solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act.

e. Revise R 336.1212(l) to delete the exemption of certain activities from determining major source status. Part 70 and other relevant Act programs do not provide for such exemptions from major source determinations. This interim approval issue does not apply to the State's use of R 336.1212(l) as an insignificant activities list pursuant to 40 CFR 70.5(c).

f. Revise the State statutes or regulations, as appropriate, to require that permit applications include a certification of compliance with all applicable requirements and a statement of the methods used for determining compliance, as specified in 40 CFR 70.5(c)(9). Although Michigan's permit application forms include compliance certification requirements, EPA believes that neither the State statutes nor the State regulations clearly require applications to include this information.

g. Revise the definition of ''emergency'' in section 324.5527(1), NREPA, to ensure that the State's definition is not broader than that provided by 40 CFR 70.6(g)(1). The definition of ''emergency'' in 40 CFR 70.6(g)(1) includes, in part, ''any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God.''

h. Remove the provisions of section 324.5534, NREPA, which provide for exemptions from penalties or fines for violations caused by an act of God, war, strike, riot, catastrophe, or other condition as to which negligence or willful misconduct was not the proximate cause. Title V does not provide for such broad penalty and fine exemptions.

i. Revise R 336.1913 and R 336.1914 to be consistent with either the affirmative defense provisions in 40 CFR 70.6(g), or EPA's enforcement discretion policy. These State regulations provide an affirmative defense that is broader than that provided by 40 CFR 70.6(g), and therefore affect State's ability to assure compliance with all applicable requirements and the requirements of part 70 [40 CFR 70.4(b)(3)(i)].

j. Address all of the following issues relating to the State's audit privilege and immunity law, part 148 of NREPA. These conditions are proposed interim approval issues to the extent that they affect the State's title V operating permits program and the requirements of part 70.

i. Narrow the applicability of the privilege provided in section 14802, part 148 of NREPA, and narrow the applicability of the immunity provided by section 14809, part 148 of NREPA, to ensure that the State title V program has the authority to: assure compliance with part 70 permits and the requirements of the operating permits program [40 CFR 70.4(b)(3)(i)]; enforce permits and the requirement to obtain a permit [40 CFR 70.4(b)(3)(vii)]; and recover civil penalties in accordance with 40 CFR 70.11(a)(3)(i).

ii. Submit a revised title V Attorney General's opinion that addresses EPA's concerns in subpart II.A.2.i. above, and certifies that the revised part 148 does not affect Michigan's ability to meet the enforcement requirements of 40 CFR 70.4(b)(3)(i), 40 CFR 70.4(b)(3)(vii), and 40 CFR 70.11(a)(3)(i).

iii. In lieu of subparts i. and ii. above, submit a revised title V Attorney General's opinion certifying that the current part 148 does not affect the enforcement requirements of 40 CFR 70.4(b)(3)(i), 40 CFR 70.4(b)(3)(vii), and 40 CFR 70.11(a)(3)(i). The Attorney General's opinion must also specifically address why EPA's interim approval provision requiring revisions to the currently enacted law is not valid.

iv. Submit a supplemental Attorney General's opinion certifying that all other title V authorities that may be affected by part 148 are met, including: Michigan's authority to bring suit to restrain any person from engaging in any activity in violation of a permit that is presenting an imminent and substantial endangerment [40 CFR 70.11(a)(1)]; Michigan's authority to seek injunctive relief to enjoin any violation of any program requirement, including permit conditions [40 CFR 70.11(a)(2)]; Michigan's authority to recover criminal fines [40 CFR 70.11(a)(3) (ii) and (iii)]; and the requirement that the burden of proof for establishing civil and criminal violations is no greater than the burden of proof required under the Act [40 CFR 70.11(b)]. The supplemental Attorney General's opinion must specifically address these requirements in light of the provisions contained in the State's privilege and immunity law.

This interim approval, which may not be renewed, extends for a period of up to 2 years. During the interim approval period, the State is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the 3-year time period for processing the initial permit applications.

3. Other Proposed Actions

As outlined in subpart II.A.4.c., EPA is proposing to grant approval under section 112(1)(5) and 40 CFR 63.91 of

the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

As outlined in subpart II.A.4.b., EPA is also proposing to grant approval of Michigan's preconstruction permit program, found in R 336.1201, under the authority of title V and part 70 solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between promulgation of the Federal section 112(g) rule and adoption of any necessary State rules to implement EPA's section 112(g) regulations. The EPA proposes to limit the duration of this approval to 18 months following promulgation by EPA of section 112(g) regulations, to provide Michigan adequate time to adopt any necessary regulations consistent with the Federal requirements.

C. Federal Oversight and Sanctions

If EPA were to finalize this proposed interim approval, it would extend for 2 years following the effective date of final interim approval, and could not be renewed. During the interim approval period, Michigan would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a Federal permits program for the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval, as does the 3-year time period for processing the initial permit applications.

Following final interim approval, if the State failed to submit a complete corrective program for full approval by the date 6 months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If the State then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the Act, which would remain in effect until EPA determined that the State had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of the State, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State had come into compliance. In any case, if, 6 months after application of the first sanction, the State still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following final interim approval, EPA were to disapprove the State's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the State, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State had come into compliance. In all cases, if, 6 months after EPA applied the first sanction, the State had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if a State has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to a State program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for that State upon interim approval expiration.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in an informal docket maintained at the EPA Regional Office. This docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of this docket are:

(1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) to serve as the record in case of judicial review. The EPA will consider any comments received by July 24, 1996.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the proposed action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 13, 1996.

Margaret McCue,

Acting Regional Administrator.

[FR Doc. 96–15886 Filed 6–21–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 25

[IB Docket No. 96–111; CC Docket No. 93–23; FCC 96–210]

Satellite Application and Licensing Procedures

AGENCY: Federal Communications Commission.

ACTION: Proposed Rules.

SUMMARY: The Commission has proposed a uniform legal framework permitting users in the United States greater access to satellites licensed by other countries. In so doing, the Commission proposes to collect certain legal, financial, and technical information from the applicant. The Commission also proposes to eliminate its license requirement for receive-only earth stations in the fixed satellite service operating with U.S.-licensed space stations for the reception of transmissions from foreign countries and allow them to voluntarily register their stations.

DATES: Comments must be submitted on or before July 15, 1996; reply comments must be submitted on or before August 16, 1996. Written comments by the public on the proposed and/or modified information collections are due July 15, 1996. OMB's Notice of Action on the proposed and/or modified information collections must be submitted no later than August 23, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W. Washington, D.C. 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W. Washington, D.C. 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Paula Ford, International Bureau, Satellite Policy Branch, (202) 418–0760; Virginia Marshall, International Bureau, Satellite Policy Branch, (202) 418–0778; Kathleen Campbell, International Bureau, Satellite Policy Branch (202) 418–0753. For additional information concerning the information collection contained in this NPRM contact Dorothy Conway at (202) 418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in IB Docket No. 96–111; CC Docket No. 93–23; FCC 96–210, adopted May 9, 1996 and released May 14, 1996. The complete text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W. Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

This NPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995, Pub. L. No. 104–13 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding. Comments are requested on all aspects of the proposals. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due no later than August 23, 1996. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Title: Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States and Amendment of § 25.131 of the Commission's rules and regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations.

Form No.: FCC Form 312.

Type of Review: Revision of existing collections.

Respondents: Businesses or other for profit, including small businesses.

Number of Respondents: 800.

Estimated Time Per Response: The Commission estimates all respondents will hire an attorney or legal assistant to complete the form. The time to retain these services is 2 hours per respondent.

Total Annual Burden: 1,600 hours.

Estimated Costs Per Respondent: $900. This includes the charges for hiring an attorney or legal assistant @ 150 an hour to complete the application. The estimated time to complete the form is 6 hours per response.

Needs and Uses: In accordance with the Communications Act, the information collected will be used by the Commission in evaluating U.S.-licensed earth stations applications requesting authority to operate with space stations licensed by other administrations. The information will be used to determine the legal, technical, and financial ability of the non-U.S. licensed space station to serve the United States and will assist the Commission in determining whether such authorization is in the public interest.

As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document.

Summary of Notice of Proposed Rulemaking

1. The Commission has long pursued a procompetitive policy that relies on the entry of as many independent service providers as possible. In keeping with this policy, we recently allowed foreign carriers to enter the U.S. telecommunications market to provide international common carrier service if effective competitive opportunities exist for U.S. carriers in the destination markets of dominant foreign carriers seeking to enter the U.S. market. *See* Market Entry and Regulation of Foreign-Affiliated Entities, 11 FCC Rcd. 3873, 60 FR 67332 (December 29, 1995). We also eliminated the distinction between domestic and international fixed satellite services over U.S.-licensed satellite systems allowing U.S. satellite systems to provide domestic and/or international service. *See* Amendment of Commission's Regulatory policies governing Domestic Fixed Satellites and Separate International Satellite Systems, 11 FCC Rcd. 2429, 61 FR 09946 (March 12, 1996).

2. Similarly, this NPRM reflects the Commission's continued efforts to promote competition in the U.S. satellite services market which, in turn, will increase service options, lower prices, and improve quality. With this NPRM, we propose a uniform framework for evaluating applications by users in the United States for authority to access satellites licensed by other countries. Under our proposed rules, non-U.S.-licensed satellite systems will be able to provide satellite service to, from, and within the United

States to the extent that foreign markets allow effective competitive opportunities for U.S. satellite systems to provide analogous services. Our proposal will facilitate much greater access to non-U.S. satellites, thus benefitting users within the United States and will encourage foreign governments to open their satellite communications markets, thereby enhancing competition in the global market for satellite services.

3. In implementing this policy, we will not require satellite systems already licensed by other countries to obtain space station licenses from the United States. Rather, we propose to permit these systems access to the U.S. market by licensing earth stations to operate with non-U.S. satellite systems as we have done in the past. When reviewing applications, the Commission proposes to apply an ''effective competitive opportunities for satellites'' or ''ECO-Sat'' test to determine whether the entrance of a non-U.S. satellite system will promote ''effective competitive opportunities'' for U.S. satellites in foreign markets. Under the ECO-Sat test, the Commission will determine whether there are any *de jure or de facto* barriers that inhibit U.S. satellite systems from providing services similar to those requested by the non-U.S. satellite. The Commission proposes to apply the ECO-Sat test to determine whether U.S. fixed satellite systems have effective competitive opportunities in: (1) The licensing jurisdiction or ''home market'' of the foreign satellite system that seeks to serve the United States; and (2) the ''route market'' the applicant seeks to serve from the United States over the non-U.S. satellite. When evaluating the entrance of a foreign mobile satellite system, we propose to apply a modified version of the ECO-Sat test in which the Commission would determine whether some ''critical mass'' of foreign countries, globally or regionally, are open to U.S. satellite operators before allowing a foreign mobile satellite system to serve the United States.

4. We will also consider other public interest factors which may dictate a result different from that indicated by applying the ECO-Sat test. We may consider, with appropriate guidance from the Executive Branch, other public interest factors including national security, law enforcement, foreign policy, or trade issues. Issues of spectrum availability and coordination may also be considered.

5. The Commission proposes to apply the ECO-Sat test and larger public interest analysis when an inter-governmental organization such as Inmarsat or Intelsat seeks to provide U.S. domestic service and when subsidiaries, affiliates, or successors of an inter-governmental organization seek access to the U.S. market. International service from the U.S. is already being provided to virtually every market in the world by Intelsat and Inmarsat and the Commission does not intend to apply its rules retroactively. Thus, the Commission proposes to continue licensing international communications over the Intelsat and Inmarsat systems without applying the ECO-Sat test.

6. In addition, the Commission proposes to retain the licensing requirement for receive-only earth stations in the fixed satellite service that communicate with non-U.S. satellites. Retaining the licensing requirement for these earth stations ensures that the related radio communications conducted within the United States, are consistent with U.S. competition and spectrum management policies. Also, we believe it is no longer necessary to license receive-only earth stations operating with U.S. satellite systems for the reception of service from foreign countries. Instead, we propose that they be subject to a voluntary registration process. Finally, in an attempt to diminish regulatory burden and speed processing, we propose to allow receive-only earth station applicants operating with U.S. or non-U.S. satellites to request blanket authority to operate multiple technically identical receive-only earth stations.

7. To ensure that the non-U.S. systems can provide service in a fast and efficient manner, the Commission will require certain legal, technical, and financial information concerning the non-U.S. system. Also, to prevent interference to U.S. satellite systems and to facilitate responsible spectrum management in the United States, we propose to require all non-U.S. satellite systems serving the United States to comply with the technical and reporting requirements we impose on U.S. satellite systems.

8. This proposal is likely to enhance competition in the global communication services marketplace, prevent anticompetitive conduct in the provision of satellite services, and encourage foreign governments to open their communications market.

Ordering Clauses

9. Accordingly, it is ordered that pursuant to the authority contained in sections 1, 4(i), 303, and 308 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303, and 308, NPRM is hereby given of our intent to adopt the policies and rules set forth in this NPRM and that comment is sought on all the proposals in this NPRM.

10. It is further ordered that the Secretary shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 **ET SEQ.** (1981).

Administrative Matters

11. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a). The Sunshine Agenda period is the period of time that commences with the release of public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. 47 CFR 1.1202(f). During the Sunshine Agenda period, no presentations, ex parte or otherwise, are permitted unless specifically exempted. 47 CFR 1.1203.

12. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before July 15, 1996 and reply comments on or before August 16, 1996. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments send additional copies to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Federal Communications Commission, Reference Center, Room 239, 1919 M Street, NW., Washington, DC 20554. For further information concerning this rulemaking contact Paula Ford at (202)418–0760 or Virginia Marshall (202)418–0778.

Initial Regulatory Flexibility Act Statement

13. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial

Regulatory Flexibility Analysis (''IRFA'') of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix A of the NPRM. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the NPRM, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 25

Satellites

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 25 of the Commission's Rules and Regulations, Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for Part 25 continues to read as follows:

Authority: Secs. 25.101 to 25.601 issued under Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 101–104, 76 Stat. 419–427; 47 U.S.C. 701–744; 47 U.S.C. 554.

2. Section 25.113 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 25.113 Construction permits.

* * * * *

(b) Construction permits are not required for satellite earth stations that operate with U.S.-licensed or non-U.S.-licensed space stations. * * *

* * * * *

3. Section 25.115 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 25.115 Applications for earth station authorizations.

* * * * *

(c) Large Networks of Small Antennas operating in the 12/14 GHz frequency bands with U.S.-licensed or non-U.S.-licensed satellites for domestic services. * * *

* * * * *

4. Section 25.130 is amended by revising the first sentence of paragraph (d) to read as follows:

§ 25.130 Filing requirements for transmitting earth stations.

* * * * *

(d) Transmissions of signals or programming to non-U.S.-licensed satellites, and to and/or from foreign points by means of U.S.-licensed fixed satellites may be subject to restrictions as a result of international agreements or treaties. * * *

* * * * *

5. Section 25.131 is amended by revising paragraphs (b) and (j) to read as follows:

§ 25.131 Filing requirements for receive-only earth stations.

* * * * *

(b) Except as provided in paragraph (j) of this section, receive-only earth stations in the fixed-satellite service that operate with U.S.-licensed satellites may be registered with the Commission in order to protect them from interference from terrestrial microwave stations in bands shared co-equally with the fixed service in accordance with the procedures of §§ 25.203 and 25.251–25.256.

* * * * *

(j) Receive-only earth stations operating with non-U.S.-licensed space stations shall file an FCC Form 493 requesting a license or modification to operate such station. Receive-only earth stations used to receive INTELNET I service from Intelsat space stations need not file for licenses. See Deregulation of Receive-Only Satellite Earth Stations Operating with the INTELSAT Global Communications Satellite System, Declaratory Ruling, RM No. 4845, FCC 86–214 (released May 19, 1986).

6. Section 25.137 is added to read as follows:

§ 25.137 Application requirements for earth stations operating with non-U.S.-licensed space stations.

(a) Earth stations requesting authority to operate with a non-U.S.-licensed space station to participate in the U.S. satellite service market must attach an exhibit with their FCC Form 493 application with information demonstrating that U.S.-licensed satellite systems have effective competitive opportunities to provide analogous services in:

(1) The country in which the non-U.S.-licensed space station is licensed; and

(2) All countries in which communications with the U.S. earth station will originate or terminate. The applicant bears the burden of showing that there are no *de jure* or legal constraints that limit or prevent access of the U.S. satellite system in the relevant foreign markets. The exhibit required by this paragraph must also include a statement of why grant of the application is in the public interest.

(b) Earth stations requesting authority to operate with a non-U.S.-licensed space station must attach to their FCC Form 493 an exhibit providing legal, financial, and technical information for the non-U.S.-licensed space station in accordance with this Part 25 and Part 100 of this chapter. If the non-U.S.-licensed space station is in orbit and operating, the applicant need not include the financial information.

(c) A non-U.S.-licensed satellite system seeking to serve the United States can be considered contemporaneously with other U.S. satellite systems if it is:

(1) In orbit and operating;

(2) Has a license from another administration; or

(3) Has been submitted for coordination to the International Telecommunication Union and is pursuing a license in another administration.

[FR Doc. 96–15857 Filed 6–21–96; 8:45 am]

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OFFICE OF PERSONNEL MANAGEMENT

48 CFR Parts 1602, 1604, 1615, 1616, 1622, 1631, 1644, 1652, and 1653

RIN 3206–AH45

Federal Employees Health Benefits Program Acquisition Regulation; Truth in Negotiations Act and Related Changes

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed regulation that would amend the Federal Employees Health Benefits Acquisition Regulation (FEHBAR) to implement those portions of the Federal Acquisition Streamlining Act of 1994 (FASA) that impact on the FEHB Program.

DATES: Comments must be received on or before July 24, 1996.

ADDRESSES: Written comments may be sent to Lucretia F. Myers, Assistant Director for Insurance Programs, Retirement and Insurance Service, Office of Personnel Management, P.O.

Box 57, Washington, DC 20044; delivered to OPM, Room 3451, 1900 E Street NW., Washington, DC.; or FAXed to (202) 606–0633.

FOR FURTHER INFORMATION CONTACT: Mary Ann Mercer, (202) 606–0004.

SUPPLEMENTARY INFORMATION: The Federal Acquisition Streamlining Act of 1994 (FASA), Public Law 103–355, effective October 13, 1994, amends Section 304A of the Truth in Negotiations Act (TINA) by increasing the threshold for Federal contractors and subcontractors submitting cost or pricing data from $100,000 to $500,000. FASA also amends other provisions of TINA affecting the submission of cost or pricing data.

This proposed regulation would amend the FEHBAR to conform to FASA by:

- Increasing the threshold for the submission of certified cost or pricing data for FEHB Program community rated contracts, and for the submission of certified cost or pricing data for FEHB Program experience rated contracts, subcontracts, and contract modifications, from $100,000 to $500,000;
- Ensuring uniform treatment of cost or pricing data as intended by FASA; and,
- Conforming the FEHBAR to these and other FASA changes.

Effect of FASA on Community Rated Contracts

A number of changes made by FASA and the implementing Federal Acquisition Regulation (FAR) provisions impact on the way OPM has treated FEHB Program community rated contracts in the past, specifically with regard to contract type and establishing the reasonableness of the carriers' rates. For example, TINA provides for special exceptions to the submission of cost or pricing data for contracts based on adequate price competition, contracts based on established catalog or market price of commercial items, and contracts for which prices are set by law or regulation.

FEHB Program contracts do not have price competition because the contracts are not subject to the competitive bidding requirements of Title 41 of the United States Code; nor are prices set by law or regulation. However, the FEHBAR identifies community rated contracts as contracts based on established market price. Under TINA, the contracting officer may not require a contractor to submit cost or pricing data for contracts based on established market prices of commercial items sold in substantial quantities to the general public.

The FAR clarifies the standards for determining an established market price [48 CFR 15.804–1(b)(1)(ii)] and the definitions of commercial items [48 CFR Part 12] and cost or pricing data [48 CFR 15.801]. As a result of these clarifications, we reevaluated our treatment of community rated contracts, as well as the entire process by which we require cost or pricing data, and the definitions of terms in the FEHBAR.

The FEHBAR has, since it was initially published, provided that community rated contracts are based on established market price. OPM has deemed community rated contracts to be based on market price in the past in an attempt to fit them neatly into a standard FAR classification. However, after reevaluating the concept of established market price, we do not believe that it really reflects the way in which community rates are established; nor do we believe the contracts can be considered contracts for commercial items or services.

Contrary to what many outside the health insurance industry believe, a community rate is not a single rate that an HMO (also known as a ''comprehensive medical plan'' or ''CMP'') charges all of its groups. The theory and practice of community rating has always been complex. In 1988, the enactment of the Health Maintenance Organization (HMO) Amendments of 1988 made community rating even more complicated. The HMO Amendments of 1988 authorized community rated plans to use a new rating method called ''Adjusted Community Rating.'' In spite of its name, ACR is actually a form of experience rating (prospective experience rating). The HMO Amendments of 1988 so radically altered the traditional concept of community rating that it is no longer appropriate to call the community rate a ''market price'' as that term is intended to apply to Federal procurement.

In carrying out its responsibility under the FEHB Program's statutory mandate to ensure that the FEHB Program premium rates ''reasonably and equitably reflect the cost of the benefits provided'' [5 U.S.C. 8902(i)], OPM requires cost or pricing data. Cost or pricing data is fundamental to the development of the FEHB Program premium rate. The primary purpose of cost or pricing data as it relates to FEHB Program contracts is to determine whether the rating method used for the FEHB Program is consistent with the rating methods used for the carrier's two similarly sized subscriber groups (SSSGs). For example, if the rate for an SSSG is based on experience, if it incorporates claims and administrative cost loadings, or any combination of these and other elements, OPM verifies that the carrier has used the same methodology for the FEHB Program rate. In addition, there are a multiplicity of requirements specific to the FEHB Program group that differentiate the needs of our Program from a carrier's other clients and for which we require cost or pricing data: physical therapy, infertility, prescription drugs, heart transplants, coverage for newborns on self-only enrollments, and no coinsurance, to name a few.

While the FEHB Program premium rates are price driven, competition in the FEHB Program is not based on price, as it is with competitively bid procurements. In the FEHB Program, competition is based on the employees' choice of health plans, considering their personal health care needs. The only way OPM can ensure price reasonableness in lieu of price competition is through obtaining cost or pricing data. Without cost or pricing data, OPM would be unable to ensure a fair and reasonable premium rate for Federal enrollees. The practice of asking for this cost or pricing data is widely accepted in the insurance industry. Although we have required this data for over 20 years, no FEHB Program carrier has advised us that it was burdensome.

For a number of years, OPM has been trying to determine the best way to apply the FAR cost and pricing requirements. We have tried to learn from our experience and understand how we might apply the FAR requirements to community rated contracts, while remaining in compliance with the FEHB law. We have modified our acquisition regulations on a number of occasions in an attempt to achieve the most appropriate implementation of the FAR, given the unique features of community rated health benefits contracts, as compared to the more common types of contracts entered into by Federal agencies. While we have in the past defined FEHB Program community rated contracts as contracts based on established market price and classified them as fixed price with economic price adjustment, we have consistently asked for cost or pricing data because of our statutory mandate to ensure that rates reasonably and equitably reflect the benefits provided.

In view of the above, and after evaluating the revised definitions and cost and pricing data requirements pursuant to FASA and case law, we have concluded that the determination that community rated contracts are based on established market price is no

longer appropriate and fails to meet our current requirements. Similarly, the exemption of FEHB Program contracts from competitive bidding requirements, the fact that the health services under community rated contracts are not commercial services, and the fact that FEHB premiums are not set by law or regulation have caused OPM to conclude that none of the FAR exceptions to the submission of cost or pricing data contained in FAR 15.804–1 apply to the community rated contracts. Accordingly, the cost or pricing provisions of FASA are applicable.

To clarify any perceived incongruity and inconsistency between the FEHBAR, the FAR, and FASA, we are withdrawing our determination that the community rated contracts are based on established market price, and we will more closely follow the cost and pricing data requirements in the FAR. Community rated contracts in reality fit neither of the two categories of negotiated contracts provided in the FAR, that is, fixed price and cost reimbursement. Given all the relevant information, we have made a determination to classify community rated contracts simply as ''negotiated benefits contracts.''

We are also clarifying an anomaly in the FEHBAR regarding cost or pricing data on which community rated carriers justify their community rate. The capitation rates, utilization and trend data, and other information that we require from health benefits carriers are not traditional cost or pricing data used in the more common types of Government contracting. Traditional cost and pricing data consists of costs for raw materials and for processing, such as, hours worked, overtime rates, and unit costs.

FASA states that cost or pricing data are all the facts that a prudent buyer or seller would reasonably expect to affect price negotiations significantly. The term does not include information that is judgmental, but does include the factual information from which a judgment was derived. In the FEHB Program, we must obtain factual and verifiable pricing data that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred in order to set a fair and reasonable premium rate for FEHB Program enrollees. We consider the specialized rating data used by carriers in computing a rate that is appropriate for the Federal group and the similarly sized subscriber groups (SSSGs) to be relevant cost and pricing data for the FEHB Program contracts. Such data includes, but is not limited to, capitation rates; utilization data for prescription drug, hospital, and office visit benefits utilization; trend data; rating methodologies for other groups; standardized presentation of the plan's rating method (age, sex, etc.) showing that the factor predicts utilization; tiered rates information; ''step-up'' factors information; demographics such as family size; special benefit loading capitations; and adjustment factors for capitation.

OPM's approach over the years has simply been an attempt to fit the community rated contracts into the context of the FAR and utilize the provisions of the FAR requiring cost or pricing data. OPM has modified the FEHBAR in this area over time, and at this point we have concluded that we should define in regulation ''cost or pricing data'' as it relates to FEHB Program contracts. OPM will not burden carriers with new FEHBAR requirements related to cost or pricing data. We intend to follow the requirements of the FAR. To clarify unequivocally that FEHB Program community rated carriers must comply with the FASA cost and pricing provisions, the regulation specifically defines the data that OPM requires for community rated contracts of $500,000 and over as ''cost and pricing data.''

Further, the regulation classifies the community rated plans into two categories, large and small, with the number of enrollee contracts distinguishing the categories. However, because FASA sets a threshold of $500,000 for collecting cost or pricing data, there are two types of small plans.

Small Plans

(a) Plans having less than 1500 *enrollee* contracts at the time of the rate proposal and whose FEHBP premiums are less than $500,000 for the contract term.

(b) Plans having less than 1500 *enrollee* contracts at the time of the rate proposal and whose FEHBP premiums are $500,000 or more for the contract term.

Large Plans

Plans having 1500 or more enrollee contracts at the time of the rate proposal and whose FEHBP premiums are $500,000 or more for the contract term.

The regulation provides that the amount and nature of the back-up documentation for small plan rate proposals differs from the large plan requirements. All carriers must derive their Federal group rates according to OPM community rating principles. Under FASA, OPM cannot require community rated carriers with *FEHBP* contracts in which the income from the Federal group will be under $500,000 to submit cost or pricing data, although they may submit it voluntarily. Carriers with small plans in which the Federal group income is less than $500,000 must submit only a rate proposal and abbreviated utilization data for the applicable contract year. Since carriers of small plans having fewer than 1,500 enrollee contracts will not submit detailed documentation, OPM will evaluate the proposed rates by performing a basic reasonableness test on the information submitted. Rates failing this test will be subject to further review.

Carriers with small plans in which the Federal group income is $500,000 or more must submit cost or pricing data consisting of a rate proposal, a certificate of accurate pricing, and utilization data for the applicable contract year. These carriers must complete proposed net-to-carrier rate sheets and the community rate questionnaire and keep them on file for OPM review. The OPM auditors will examine the documents during plan audits, and OPM may also periodically review the documents. OPM will evaluate the proposed rates by performing a basic reasonableness test on the information submitted.

Large plan carriers must submit proposed net-to-carrier rate sheets, certificate of accurate pricing, community rate questionnaire, and detailed utilization data. OPM will evaluate the information for consistency with the requirements of 48 CFR Chapter 16 (FEHBAR).

All contracts for $500,000 or more will be subject to the interest and penalty assessments for defective rates enacted by FASA. Consistent with FASA and FEHBAR 1652.215–70, OPM will assess simple interest using the quarterly rate determinations by the Secretary of the Treasury under the authority of 26 U.S.C. 6621(a)(2).

Effect of FASA on Experience Rated Contracts

OPM has determined that cost or pricing data are required for FEHB Program experience rated contracts in which the income from the Federal group will be $500,000 or more. Cost or pricing data are also required for FEHB Program negotiated subcontracts at any tier, if the contractor and each higher tier subcontractor were required to furnish cost or pricing data, as well as for the modification of any FEHB Program contract (whether or not cost or pricing data were initially required) or subcontracts if the subcontractor was

required to submit cost or pricing data, if the subcontract or modification will equal or exceed $500,000.

Cost or pricing data for experience rated plans includes information such as claims data; actual or negotiated benefits payments made to providers of medical services for the provision of health care such as capitation not adjusted for specific groups, per diems, and Diagnostic Related Group (DRG) payments; cost data; utilization data; actuarial estimates; and administrative expenses and retentions.

All contracts for $500,000 or more will be subject to the interest and penalty assessments for defective rates enacted by FASA.

In the past, we have classified experience rated contracts as a combination of negotiated fixed-price contracts with provisions for a form of retroactive price redetermination. Like community rated contracts, experience rated contracts do not fit either of the two categories of negotiated contracts provided in the FAR (fixed price and cost reimbursement). Therefore, for consistency, we have decided to use the same contract type for all FEHBP contracts. Thus, the regulation provides that both community rated and experience rated contracts will be ''negotiated benefits contracts.'' This is a change in terminology only. OPM has added no new requirements or clauses as a result of this change in terminology. For experience rated contracts, we will continue to use FAR provisions applicable to cost analysis; and for community rated contracts, we will continue to use FAR provisions applicable to price analysis. We will continue to apply the cost principles in FAR Part 31 to experience rated contracts.

Miscellaneous Changes

Clarification of SSSGs

We have made a number of clarifications to the definition of SSSGs [1602.170–12]. The regulation is intended to describe the methodology OPM uses. Specific instructions on SSSGs will be included in the annual FEHB Program rate instructions to community rated carriers.

We have clarified how OPM determines which SSSGs it will select as a basis for determining the FEHBP rate. Specifically, after reviewing the rating methods used for the SSSGs to determine whether the rating method the carrier used for the FEHBP is appropriate, OPM determines the FEHBP rate on the basis of the lower of the rates produced by applying—to the FEHB Program—rating methods consistant with those used for the SSSGs.

In addition, we have clarified that any group with which a carrier enters into an agreement to provide health care services must be considered as a *potential* SSSG, and we have listed examples of groups that the carrier may not consider as SSSGs. For example, while health care purchasing alliances must be considered as potential SSSGs, OPM will not consider purchasing alliances mandated by state or local government which restrict membership to groups of less than 100 employees as SSSGs. OPM excludes groups from the SSSG pool based solely on the types of alliances.

We have also clarified that groups having multi-year contracts are potential SSSGs. Therefore, in selecting SSSGs, the duration of the contract term is not a factor. OPM will look at the rate year by year in determining the rate that will be applicable to the FEHB group.

These additions to the regulations are simply clarifications. Although OPM's requirements for SSSGs have not changed, as practices within the insurance industry have evolved we find it necessary to clarify our treatment of SSSGs so that there will be no question as to OPM's intent. The annual FEHB Program rate instructions incorporate these requirements; however, we have placed them in regulation because there appears to be confusion on the part of some of the carriers, and we wanted to clear up any misunderstanding.

The SSSG clarifications in § 1602.170–12 of the regulation will be applicable for the rate instructions for the 1998 contract year.

Contract Clauses

Because of the many changes to the FAR brought about by FASA, we have found it necessary to amend a number of FEHBAR clauses and certain references to FAR clauses listed in the FEHBAR Clause Matrix [FEHBAR Part 1652.3]. We have also made a number of editorial changes to the Matrix and conforming changes to the applicable FAR clauses listed in Part 1652. For clarity of presentation, we have reproduced the entire Matrix. The changes are discussed below.

We have amended the Clause Matrix in Part 1652.3 to: 1) Add FAR clause 52.242–3, Penalties for Unallowable Costs, as a result of FASA; and, 2) Drop the following FAR clauses deleted by FASA: § 52.203–1, Officials Not to Benefit; § 52.215–1, Examination of Records by Comptroller General; § 52.219–13, Utilization of Women-Owned Small Businesses; and § 52.220–3, Utilization of Labor Surplus Area Concerns.

The names of the following FAR clauses have been changed to conform to FASA: § 52.215–2, Audit & Records—Negotiation; and § 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns. FEHBAR clause 1652.204–70, ''Contractor Records Retention,'' has been changed to reflect FASA threshold and reference changes.

We have added § 1652.204–72, Filing Health Benefit Claims/Court Review of Disputed Claims to the Matrix to conform to OPM's regulation change of March 29, 1995 [60 FR 16037].

In light of our new understanding brought about by FASA, we have reconsidered the application of the FAR cost or pricing data clauses in FAR section 52.215. We have decided to discontinue using FAR 52.215–23, Price Reduction For Defective Cost Or Pricing Data—Modifications, and will rely solely on FEHBAR 1652.215–70, Price Reduction for Defective Pricing or Defective Cost or Pricing Data. FEHBAR 1652.215–70 captures all of the defective cost or pricing data elements of the FAR and FASA as they relate to the FEHB Program. Accordingly, there will be only one clause on defective cost or pricing data applicable to community rated contracts.

We have dropped the requirement for the following FAR clauses for community rated carriers: § 52.215–25, Subcontractor Cost or Pricing Data—Modifications, § 52.244–5, Competition in Subcontracting, § 1652.244–70, Subcontracts. These clauses have no practical application for community rated carriers. Subcontracts negotiated by community rated carriers generally are applicable to a community of participants. Any cost for subcontracts is generally factored into the rates of all the carrier's employer groups and cannot be split out for any single employer group.

We have added novation and change of name to the list of events in the Notice of Significant Events clause at § 1652.222–70. While the list of events in the clause is not exhaustive, OPM considers a novation or change of name sufficiently important to include on the list of events that might reasonably be expected to have a material effect upon the carrier's ability to meet its obligations under the contract.

We have amended § 1644.170, Policy for FEHBP Subcontracting Consent, by stating that the clause applies to subcontracts or modifications to subcontracts when the amount charged against the contract exceeds $100,000 and is 25% of the total cost of the

subcontract. The inclusion of the 25% requirement makes the policy statement consistent with OPM's long-established practice and conforms to the contract clause at § 1652.244–70.

We have changed the method, frequency, and rate of calculating interest in FEHBAR clause 1652.215–71, Investment Income, to simple interest on lost investment income at the quarterly rate determined by the Secretary of the Treasury under the authority of 16 U.S.C. 6621(a)(2) to make it consistent with the treatment of interest under § 1652.215–70, Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.

We have dropped the applicability of the following clauses to community rated contracts because they apply only to contracts based on cost analysis: § 52.215–27, Termination of Defined Benefit Pension Plans; § 52.215–39, Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB); § 1652.232–71, Payments—Contracts With Letter of Credit Payment Arrangements.

We have dropped the application of § 1652.232–70, Payments—Contracts Without Letter of Credit Payment Arrangements, to experience rated contracts because it applies only to contracts based on price analysis. In addition, we have dropped the application of § 1652.232–71, Payments—Contracts with Letter of Credit Payment Arrangements, to community rated contracts because it applies only to contracts based on cost analysis.

FEHBAR 1652.216–70, Accounting and Price Adjustment has been amended to delete references to market price and to accommodate new industry trends in community rating.

In keeping with the spirit of the FAR, OPM is adopting FAR 52.222–21, Certification of Nonsegregated Facilities, and FAR 52.222–25, Affirmative Action Compliance for the FEHB Program. A technical change has been made to the clauses to replace the word ''offeror'' with the word ''contractor'' to reflect the fact that the statutory provisions of 5 U.S.C. chapter 89 obviate the issuance of solicitations.

We have added the following clauses because we have determined that they are applicable to FEHB Program contracts: § 52.222–37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era; § 52.227–1, Authorization and Consent; § 52.227–2, Notice and Assistance Regarding Patent and Copyright Infringement; § 52.232–28, Electronic Funds Transfer Payment Methods.

To conform with FEHBAR 1632.617, we have indicated in the Matrix that FAR 52.232–17, Interest, applies to experience rated contracts as well as to community rated contracts.

We have deleted the FAR clause dates in FEHBAR 1652.000. FAR clauses become outdated over time and, if the FAR clause dates are contained in the FEHBAR, OPM must continually revise the FEHBAR to keep it up-to-date. It has always been OPM's intent to apply to the contracts the most current FAR clause in effect at the beginning of each contract term. The FAR clause dates will continue to be included in the contract so that there will be no question as to which FAR clause version is applicable.

Three FEHBAR clause dates have been added in Subpart 1652.2 because they had been inadvertently omitted. The clauses are § 1652.232–70, Payments—community rated contracts, § 1652.232–71, Payments—experience rated contracts, and § 1652.204–72, Filing Health Benefit Claims/Court Review of Disputed Claims.

OPM has also updated a number of references in the proposed regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because all of the small plan FEHB Program contracts fall below the threshold for submitting cost or pricing data.

List of Subjects in 48 CFR Parts 1602, 1604, 1615, 1616, 1622, 1631, 1644, 1652, and 1653

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is proposing to amend Chapter 16 of Title 48, Code of Federal Regulations, as follows:

CHAPTER 16—OFFICE OF PERSONNEL MANAGEMENT FEDERAL EMPLOYEES HEALTH BENEFITS ACQUISITION REGULATION

1. The authority citation for 48 CFR Parts 1602, 1604, 1615, 1616, 1622, 1631, 1644, 1652, and 1653 continues to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

PART 1602—DEFINITIONS OF WORDS AND TERMS

2. In section 1602.170–2 paragraph (a) is revised to read as follows:

1602.170–2 Community rate.

(a) *Community rate* means a rate of payment based on a per member per month capitation rate or its equivalent that applies to a combination of the subscriber groups for a comprehensive medical plan. References in this subchapter to ''price analysis'' relating to the applicability of policy and contract clauses refer to comprehensive medical plan carriers using community rates.

* * * * *

3. Sections 1602.170–5 through 1602.170–12 are redesignated as sections 1602.170–6 through 1602.170–13 respectively, a new section 1602.170–5 is added and newly redesignated section 1602.170–12 is revised to read as follows:

1602.170–5 Cost or pricing data.

(a) *Experience rated plans.* Cost or pricing data is the data OPM requests in in the carrier's rate submission for the applicable contract period.

(b) *Community rated plans.* Cost or pricing data is the specialized rating data used by carriers in computing a rate that is appropriate for the Federal group and the similarly sized subscriber groups (SSSGs) and requested by OPM in the rate instructions for the applicable contract period.

* * * * *

1602.170–12 Similarly sized subscriber groups.

(a) *Similarly sized subscriber groups* (SSSGs) are a comprehensive medical plan's two employer groups that:

(1) As of the date specified by OPM in the rate instructions, have a subscriber enrollment closest to the FEHBP subscriber enrollment; and,

(2) Use any rating method other than retrospective experience rating; and,

(3) Meet the criteria specified in the rate instructions issued by OPM.

(b) Any group with which an FEHB carrier enters into an agreement to provide health care services is a potential SSSG (including separate lines of business, government entities, groups that have multi-year contracts, and groups having point-of-service products).

(c) Exceptions to the general rule stated in paragraph (b) of this section are (and the following groups must be excluded from SSSG consideration):

(1) Groups the carrier rates by the method of retrospective experience rating;

(2) Groups consisting of the plan's own employees;

(3) Medicaid groups, Medicare groups, and groups that have only a stand alone benefit (such as dental only);

(4) A purchasing alliance mandated by state or local government which restricts membership to groups of less than 100 employees.

(d) OPM shall determine the FEHBP rate by selecting the lower of the two rates derived by using rating methods consistent with those used to derive the SSSG rates.

PART 1604—ADMINISTRATIVE MATTERS

1604.705 [Amended]

4. In subpart 1604.7, section 1604.705 is amended by removing the words ''Audit—Negotiation,'' and adding in its place ''Audit & Records—Negotiation.''

PART 1615—CONTRACTING BY NEGOTIATION

5. Section 1615.802 is revised to read as follows:

1615.802 Policy.

Pricing of FEHB contracts is governed by 5 U.S.C. 8902(i), 5 U.S.C. 8906, and other applicable law. FAR subpart 15.8 shall be implemented by applying the policies and procedures—to the extent practicable—as follows:

(a) For both experience rated and community rated contracts for which the FEHBP premiums for the contract term will be less than $500,000, OPM shall not require the carrier to provide cost or pricing data in the rate proposal for the following contract term.

(b)(1) Cost analysis shall be used for contracts where premiums and subscription income are determined on the basis of experience rating.

(2) The application of FAR 15.802(b)(2) should not be construed to prohibit the consideration of preceding year surpluses or deficits in carrier-held reserves in the rate adjustments for subsequent year renewals of contracts based on cost analysis.

(c)(1) Price analysis for contracts where premiums and subscription income are based on community rates. For contracts for which the FEHBP premiums for the contract term will be less than $500,000, OPM shall not require the carrier to provide cost or pricing data. The carrier must submit only a rate proposal and abbreviated utilization data for the applicable contract year. OPM will evaluate the proposed rates by performing a basic reasonableness test on the information submitted. Rates failing this test will be subject to further review.

(2) For contracts with fewer than 1,500 enrollee contracts for which the FEHBP premiums for the contract term will be $500,000 or more, OPM shall require the carrier to submit its rate proposal, utilization data, and the certificate of accurate cost or pricing data required in § 1615.804–70. In addition, OPM shall require the carrier to complete the proposed rates form containing cost and pricing data, and the Community Rate Questionnaire, but shall not require the carrier to send these documents to OPM. The carrier shall keep the documents on file for periodic auditor and actuarial review in accordance with § 1652.204–70. OPM shall perform a basic reasonableness test on the data submitted. Rates that do not pass this test shall be subject to further OPM review.

(3) For contracts with 1,500 or more enrollee contracts for which the FEHBP premiums for the contract term will be at least $500,000, OPM shall require the carrier to provide the data and methodology used to determine the FEHBP rates. OPM shall also require the data and methodology used to determine the rates for the plan's similarly sized subscriber groups. The carrier shall provide cost or pricing data required by OPM in its rate instructions for the applicable contract period. OPM shall evaluate the data to ensure that the rate is reasonable and consistent with the requirements in this chapter. If necessary, OPM may require the carrier to provide additional documentation.

(4) Contracts shall be subject to a downward price adjustment if OPM determines that the Federal group was charged more than it would have been charged using a methodology consistent with that used for the SSSGs. Such adjustments shall be based on the lower of the two rates determined by using the methodology (including discounts) the Carrier used for the two SSSGs.

(5) FEHBP community rated carriers shall comply with SSSG criteria provided by OPM in the rate instructions for the applicable contract period.

6. Section 1615.804–70 is revised to read as follows:

1615.804–70 Certificate of cost or pricing data for community rated plans.

The contracting officer shall require a carrier with a contract meeting the requirements in § 1615.802(c)(2) or § 1615.802(c)(3) to execute the Certificate of Accurate Cost or Pricing Data contained in this section. A carrier with a contract meeting the requirements in § 1615.802(c)(2) shall complete the Certificate and keep it on file at the plan in accordance with § 1652.204–70. A carrier with a contract meeting the requirements in § 1615.802(c)(3) shall submit the Certificate to OPM along with its rate reconciliation, which is submitted during the first quarter of the applicable contract year.

Certificate of Accurate Cost and Pricing Data for Community Rated Plans

This is to certify that, to the best of my knowledge and belief: (1) the cost or pricing data submitted (or, if not submitted, maintained and identified by the carrier as supporting documentation) to the Contracting Officer or the Contracting Officer's representative or designee, in support of the _____* FEHBP rates were developed in accordance with the requirements of 48 CFR Chapter 16 and the FEHBP contract and are accurate, complete, and current as of the date this certificate is executed; and (2) the FEHBP rates were developed in a manner consistent with the methodology used to rate the plan's similarly sized subscriber groups and approved by OPM.

Firm: _____

Name: _____

Signature: _____

Date of Execution: _____

(End of Certificate)

1615.804–71 [Removed and reserved]

7. Section 1615.804–71 is removed and reserved, and section 1615.804–72 is revised to read as follows:

1615.804–72 Rate reduction for defective pricing or defective cost or pricing data.

The clause set forth in § 1652.215–70 shall be inserted in FEHBP contracts for $500,000 or more that are based on price analysis.

PART 1616—TYPES OF CONTRACTS

8. Section 1616.102, is revised to read as follows:

1616.102 Policies.

All FEHBP contracts shall be negotiated benefits contracts.

Subpart 1616.2—[Removed]

9. Subpart 1616.2 is removed and Subpart 1616.70 is added to read as follows:

Subpart 1616.70—Negotiated Benefits Contracts

1616.7001 Clause—contracts based on price analysis (community rate).

The clause at § 1652.216–70 shall be inserted in all FEHBP contracts based on price analysis.

*Insert the year for which the rates apply. Normally, this will be the year for which the rates are being reconciled.

1616.7002 Clause—contracts based on cost analysis (experience rate).

The clause at § 1652.216–71 shall be inserted in all FEHBP contracts based on cost analysis.

PART 1622—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

10.–11. In subpart 1622.8, sections 1622.810–70 and 1622.810–71 are added to read as follows:

Subpart 1622.8—Equal Employment Opportunity.

1622.810–70 Contract clause.

The statutory provisions of 5 U.S.C. Chapter 89 obviate the issuance of solicitations. Nevertheless, FAR clause 52.222–21, Certification of Nonsegregated Facilities, shall be inserted in all FEHBP contracts, and the contracting officer shall replace the word ''offeror'' with the word ''contractor'' wherever it appears in the clause.

1622.810–71 Contract clause.

The statutory provisions of 5 U.S.C. Chapter 89 obviate the issuance of solicitations. Nevertheless, FAR clause 52.222–25, Affirmative Action Compliance shall be inserted in all FEHBP contracts, and the contracting officer shall replace the word ''offeror'' with the word ''contractor'' wherever it appears in the clause.

PART 1631—CONTRACT COST PRINCIPLES AND PROCEDURES

12. In subpart 1631.2, section 1631.205–75, paragraph (b), is revised to read as follows:

1631.205–75 Selling costs.

* * * * *

(b) Selling costs are allowable costs to FEHBP contracts to the extent that they are necessary for conducting annual contract negotiations with the Government and for liaison activities necessary for ongoing contract administration. Personnel and related travel costs are allowable for attendance at Open Season Health fairs and other similar activities sponsored by Government agencies (but see FAR 31.205–1 ''Public relations and advertising costs'', and The Federal Employees Health Benefits Handbook for Personnel and Payroll Offices, Subchapter S2–3(f) ''Controlling contacts between employees and carriers'').

PART 1644—SUBCONTRACTING POLICIES AND PROCEDURES

13. In Subpart 1644.1, section 1644.170 is revised to read as follows:

1644.170 Policy for FEHBP subcontracting consent.

For all experience rated FEHBP contracts, advance approval shall be required on subcontracts or modifications to subcontracts when the amount charged against the FEHBP contract exceeds $100,000 and is 25% of the total cost of the subcontract.

14. In subpart 1644.2, section 1644.270 is revised to read as follows:

1644.270 FEHBP contract clause.

The clause set forth at § 1652.244–70 shall be inserted in all experience rated FEHBP contracts.

SUBCHAPTER H—CLAUSES AND FORMS

PART 1652—CONTRACT CLAUSES

15. In part 1652, section 1652.000 is revised to read as follows:

1652.000 Applicable clauses.

The clauses of FAR subpart 52.2 shall be applicable to FEHBP contracts as specified in the FEHBAR Clause Matrix in subpart 1652.3.

Section and Clause Title

52.202–1 Definitions.
52.203–3 Gratuities.
52.203–5 Covenant Against Contingent Fees.
52.203–7 Anti-Kickback Procedures.
52.203–9 Requirement for Certificate of Procurement Integrity—Modification.
52.203–12 Limitation on Payments to Influence Certain Federal Transactions.
52.209–6 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.
52.215–2 Audit and Records—Negotiation.
52.215–22 Price Reduction for Defective Cost or Pricing Data.
52.215–24 Subcontractor Cost or Pricing Data.
52.215–27 Termination of Defined Benefit Pension Plans.
52.215–30 Facilities Capital Cost of Money.
52.215–31 Waiver of Facilities Capital Cost of Money.
52.215–39 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB).
52.219–8 Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns.
52.222–1 Notice to the Government of Labor Disputes.
52.222–3 Convict Labor.
52.222–4 Contract Work Hours and Safety Standards Act—Overtime Compensation—General.
52.222–21 Certification of Nonsegregated Facilities.
52.222–25 Affirmative Action Compliance.
52.222–26 Equal Opportunity.
52.222–28 Equal Opportunity Preaward Clearance of Subcontracts.
52.222–29 Notification of Visa Denial.
52.222–35 Affirmative Action for Special Disabled and Vietnam Era Veterans.
52.222–36 Affirmative Action for Handicapped Workers.
52.222–37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.
52.223–2 Clean Air and Water.
52.223–6 Drug-Free Workplace.
52.227–1 Authorization and Consent.
52.227–2 Notice and Assistance Regarding Patent and Copyright Infringement.
52.229–3 Federal, State,and Local Taxes.
52.229–4 Federal, State, and Local Taxes (Noncompetitive Contract).
52.229–5 Taxes—Contracts Performed in U.S. Possessions or Puerto Rico.
52.229–6 Taxes—Foreign Fixed-Price Contracts.
52.230–2 Cost Accounting Standards.
52.230–3 Disclosure and Consistency of Cost Accounting Practices.
52.230–5 Administration of Cost Accounting Standards.
52.232–8 Discounts for Prompt Payment.
52.232–17 Interest.
52.232–23 Assignment of Claims.
52.232–28 Electronic Funds Transfer Payment Methods.
52.233–1 Disputes.
52.242–1 Notice of Intent to Disallow Costs.
52.242–3 Penalties for Unallowable Costs.
52.242–13 Bankruptcy.
52.243–1 Changes—Fixed Price—Alternate I.
52.244–5 Competition in Subcontracting.
52.245–2 Government Property (Fixed-Price Contracts).
52.246–25 Limitation of Liability—Services.
52.247–63 Preference for U.S.-Flag Air Carriers.
52.249–2 Termination for Convenience of the Government (Fixed-Price).
52.249–8 Default (Fixed-Price Supply and Service).
52.251–1 Government Supply Sources.
52.232–2 Clauses Incorporated by Reference.
52.252–4 Alterations in Contract.
52.252–6 Authorized Deviations in Clauses.

16. In subpart 1652.2, sections 1652.204–70 and 1652.215–70 are revised, and section 1652.204–72 is amended by adding ''(MAR 1995)'' in the title of the clause after the words ''Disputed Claims'' and before the period to read as follows:

1652.204–70 Contractor records retention.

As prescribed in 1604.705, the following clause shall be inserted in all FEHBP contracts.

Contractor Records Retention (Jan 1997)

Notwithstanding the provisions of section 5.7 (FAR 52.215–2(f)) ''Audit and Records-Negotiation,'' the Carrier will retain and make available all records applicable to a contract term that support the annual statement of operations and, for contracts that exceed the threshold at FAR 15.804–

2(a)(1), the rate submission for that contract term for a period of 5 years after the end of the contract term to which the records relate, except that individual enrollee and/or patient claim records shall be maintained for 3 years after the end of the contract term to which the claim records relate.

(End of Clause)

1652.215–70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.

As prescribed in 1615.804–72, the following clause shall be inserted in FEHBP contracts exceeding the threshold at FAR 15.804–2(a)(1) that are based on price analysis.

Rate Reduction for Defective Pricing or Defective Cost or Pricing Data (Jan 1997)

(a) If any rate established in connection with this contract was increased because (1) the Carrier submitted, or kept in its files in support of the FEHBP rate, cost or pricing data that were not complete, accurate, or current as certified in the Certificate of Accurate Cost or Pricing Data (FEHBAR 1615.804–70); (2) the Carrier submitted, or kept in its files in support of the FEHBP rate, cost or pricing data that were not accurate as represented in the rate proposal documents; (3) the Carrier developed FEHBP rates with a rating methodology and structure inconsistent with that used to develop rates for similarly sized subscriber groups (see FEHBAR 1602.170–12) as certified in the Certificate of Accurate Cost or Pricing Data for Community Rated Plans; or (4) the Carrier submitted or, or kept in its files in support of the FEHBP rate, data or information of any description that were not complete, accurate, and current—then, the rate shall be reduced in the amount by which the price was increased because of the defective data or information.

(b)(1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Carrier agrees not to raise the following matters as a defense:

(i) The Carrier was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted or maintained and identified.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Carrier took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Carrier did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (b)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Carrier certifies to the Contracting Officer that, to the best of the Carrier's knowledge and belief, the Carrier is entitled to the offset in the amount requested; and

(B) The Carrier proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data was known by the Carrier to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

(c) When the Contracting Officer determines that the rates shall be reduced and the Government is thereby entitled to a refund, the Carrier shall be liable to and shall pay the FEHB Fund at the time the overpayment is repaid—

(1) Simple interest on the amount of the overpayment from the date the overpayment was paid from the FEHB Fund to the Carrier until the date the overcharge is liquidated. In calculating the amount of interest due, the quarterly rate determinations by the Secretary of the Treasury under the authority of 26 U.S.C. 6621(a)(2) applicable to the periods the overcharge was retained by the Carrier shall be used; and,

(2) A penalty equal to the amount of overpayment, if the Carrier knowingly submitted cost or pricing data which was incomplete, inaccurate, or noncurrent.

(End of Clause)

17. Section 1652.215–71 is amended by removing ''(JAN 1991)'' from the clause heading and adding in its place ''(JAN 1997)'' and by revising paragraph (f) to read as follows:

1652.215–71 Investment Income.

* * * * *

(f) The Carrier shall credit the Special Reserve for income due in accordance with this clause. All amounts payable shall bear simple interest on lost investment income at the quarterly rate determined by the Secretary of the Treasury under the authority of 16 U.S.C. 6621(a)(2) applicable to the periods in which the amount becomes due, as provided in paragraphs (d) and (e) of this clause.

* * * * *

18. Section 1652.216–70 is revised to read as follows:

1652.216–70 Accounting and price adjustment.

As prescribed in 1616.7001, the following clause shall be inserted in all FEHBP contracts based on price analysis.

Accounting and Price Adjustment (Jan 1997)

(a) *Annual Accounting Statement.* The Carrier, not later than 90 days after the end of each contract period, shall furnish to OPM for that contract period an accounting of its operations under the contract. The accounting shall be in the form prescribed by OPM.

(b) *Adjustment.* (1) This contract is community rated as defined in FEHBAR 1602.170–2.

(2) The subscription rates agreed to in this contract shall be equivalent to the subscription rates given to the plan's similarly sized subscriber groups (SSSGs).

(3) If, at the time of the rate reconciliation, the subscription rates are found to be lower than the equivalent rates for the lower of the two SSSGs, the carrier may include an adjustment to the Federal group's rates for the next contract period.

(4) If, at the time of the rate reconciliation, the subscription rates are found to be higher than the equivalent rates for the lower of the two SSSGs, the Carrier shall reimburse the Fund, for example, by reducing the FEHB rates for the next contract term to reflect the difference between the estimated rates and the rates which are derived using the methodology of the lower rated SSSG.

(5) No upward adjustment in the rate established for this contract will be allowed or considered by the Government or will be made by the Carrier in this or in any other contract period on the basis of actual costs incurred, actual benefits provided, or actual size or composition of the FEHBP group during this contract period.

(6) In the event this contract is not renewed, neither the Government nor the Carrier shall be entitled to any adjustment or claim for the difference between the subscription rates prior to rate reconciliation and the actual subscription rates.

(End of Clause)

18(a). The introductory sentence of section 1652.216–71 is revised to read as follows:

1652.216–71 Accounting and Allowable Cost.

As prescribed in 1616.7002, the following clause shall be inserted in all FEHBP contracts based on cost analysis.

* * * * *

19. Section 1652.222–70 is amended by removing the date ''(JAN 1991)'' in the clause heading and adding in its place ''(JAN 1997)'' and by adding a new paragraph (a)(14) to read as follows:

1652.222–70 Notice of significant events.

* * * * *

(a) * * *

(14) A novation or change of name.

20. Sections 1652.232–70 and 1652.232–71 are amended by adding dates in the clause titles to read as follows:

1652.232–70 Payments—community rated contracts.

* * * * *

Payments (Jan 1989)

* * * * *

1652.232–71 Payments—experience rated contracts.

* * * * *

Payments (May 1992)

* * * * *

21. Section 1652.244–70 is amended by revising the introductory paragraph, clause date, and paragraph (a) of the clause to read as follows:

1652.244–70 Subcontracts.

As prescribed by 1644.270, the following clause shall be inserted in all contracts based on cost analysis:

Subcontracts (Jan 1997)

(a) The Carrier shall notify the Contracting Officer reasonably in advance of entering into any subcontract, or any subcontract modification, or as otherwise specified by this contract, if both the amount of the subcontract or modification charged to the FEHB Program exceeds $100,000 and is 25 percent of the total cost of the subcontract.

* * * * *

Subpart 1652.3—FEHBP Clause Matrix

22. In subpart 1652.3, section 1652.370 paragraph (a) is amended by removing the words ''established catalog or market price'' in the first sentence and adding in its place the words ''price analysis;'' and by revising the FEHBP Clause Matrix to read as follows:

1652.370 Use of the matix.

* * * * *

FEHBP CLAUSE MATRIX

Clause No.	Text Reference	Title	Use status	Use with contracts based on	
				Cost analysis	Price analysis
FAR 52.202–1	FAR 2.2	Definitions	M	T	T
FAR 52.203–3	FAR 3.202	Gratuities	M	T	T
FAR 52.203–5	FAR 3.404(c)	Covenant Against Contingent Fees	M	T	T
FAR 52.203–7	FAR 3.502–3	Anti-Kickback Procedures	M	T	T
FAR 52.203–9	FAR 3.104–10(b)	Requirement for Certificate of Procurement Integrity—Modification.	M	T	T
FAR 52.203–12	FAR 3.808	Limitation on Payments to Influence Certain Federal Transactions.	M	T	T
1652.203–70	1603.703	Misleading, Deceptive, or Unfair Advertising	M	T	T
1652.204–70	1604.705	Contractor Records Retention	M	T	T
1652.204–71	1604.7001	Coordination of Benefits	M	T	T
1652.204–72	1604.7101	Filing Health Benefit Claims/Court Review of Disputed Claims	M	T	T
FAR 52.209–6	FAR 9.409(b)	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.	M	T	T
FAR 52.215–2	FAR 15.105–2(b)	Audit & Records—Negotiation	M	T	T
FAR 52.215–22	FAR 15.804–8(a)	Price Reduction for Defective Cost or Pricing Data	M	T	
FAR 52.215–24	FAR 15.804–8(c)	Subcontractor Cost or Pricing Data	M	T	
FAR 52.215–27	FAR 15.804–8(e)	Termination of Defined Benefit Pension Plans	M	T	
FAR 52.215–30	FAR 15.904(a)	Facilities Capital Cost of Money	M	T	
FAR 52.215–31	FAR 15.904(b)	Waiver of Facilities Capital Cost of Money	A	T	
FAR 52.215–39	FAR 15.804–8(f)	Reversion or Adjustment of Plans for Post-retirement Benefits Other Than Pensions (PRB).	M	T	
1652.215–70	1615.804–72	Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.	M		T
1652.215–71	1615.805–71	Investment Income	M	T	
1652.216–70	1616.7001	Accounting and Price Adjustment	M		T
1652.216–71	1616.7002	Accounting and Allowable Cost	M	T	
FAR 52.219–8	FAR 19.708(a)	Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns.	M	T	T
FAR 52.222–1	FAR 22.103–5(a)	Notice to the Government of Labor Disputes	M	T	T
FAR 52.222–3	FAR 22.202	Convict Labor	M	T	T
FAR 52.222–4	FAR 22.305(a)	Contract Work Hours and Safety Standards Act—Overtime Compensation—General.	M	T	T
FAR 52.222–21	FAR 22.810(a)(1) Modification: 1622.810–70	Certification of Nonsegregated Facilities	M	T	T
FAR 52.222–25	FAR 22.810(d) Modification: 1622.810–71	Affirmative Action Compliance	M	T	T
FAR 52.222–26	FAR 22.810(a)	Equal Opportunity	M	T	T
FAR 52.222–28	FAR 22.810(g)	Equal Opportunity Preaward Clearance of Subcontracts	M	T	T
FAR 52.222–29	FAR 22.810(h)	Notification of Visa Denial	A	T	T
FAR 52.222–35	FAR 22.1308(a)	Affirmative Action for Special Disabled and Vietnam Era Veterans.	M	T	T
FAR 52.222–36	FAR 22.1408(a)	Affirmative Action for Handicapped Workers	M	T	T
FAR 52.222–37	FAR 22.1308(b)	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.	M	T	T
1652.222–70	1622.103–70	Notice of Significant Events	M	T	T
FAR 52.223–2	FAR 23.105(b)	Clean Air and Water	A	T	T
FAR 52.223–6	FAR 23.505(b)	Drug-Free Workplace	A	T	T
1652.224–70	1624.104	Confidentiality of Records	M	T	T
FAR 52.227–1	FAR 27.201–2(a)	Authorization and Consent	M	T	T
FAR 52.227–2	FAR 27.202–2	Notice and Assistance Regarding Patent and Copyright Infringement.	M	T	T

FEHBP CLAUSE MATRIX—Continued

Clause No.	Text Reference	Title	Use status	Use with contracts based on	
				Cost analysis	Price analysis
FAR 52.229–3	FAR 29.401–3	Federal, State and Local Taxes	M	T	T
FAR 52.229–4	FAR 29.401–4	Federal, State and Local Taxes (Noncompetitive Contract)	M	T	
FAR 52.229–5	FAR 29.401–5	Taxes—Contracts Performed in U.S. Possessions or Puerto Rico.	A	T	T
FAR 52.229–6	FAR 29.402–1(a)	Taxes—Foreign Fixed Price Contracts	A	T	T
FAR 52.230–2	FAR 30.201–4(a)(1)	Cost Accounting Standards	A	T	T
FAR 52.230–3	FAR 30.201–4(b)(1)	Disclosure and Consistency of Cost Accounting Practices	A	T	T
FAR 52.230–5	FAR 30.201–4(d)(1)	Administration of Cost Accounting Standards	A	T	T
FAR 52.232–8	FAR 32.111(c)(1)	Discounts for Prompt Payment	M	T	T
FAR 52.232–17	FAR 32.617(a) Modification: 1632.617	Interest	M	T	T
FAR 52.232–23	FAR 32.806(a)(1)	Assignment of Claims	A	T	T
FAR 52.232–28	FAR 32.908(d)	Electronic Funds Transfer Payment Methods	M	T	T
1652.232–70	1632.171	Payments—Contracts Without Letter of Credit Payment Arrangements.	A		T
1652.232–71	1632.172	Payments—Contracts With Letter of Credit Payment Arrangements.	A	T	
1652.232–72	1632.772	Non-Commingling of FEHBP Funds	M	T	
1652.232–73	1632.806–70	Approval for Assignment of Claims	M	T	T
FAR 52.233–1	FAR 33.215	Disputes	M	T	T
FAR 52.242–1	FAR 42.802	Notice of Intent to Disallow Costs	M	T	
FAR 52.242–3	FAR 42.709–6	Penalties for Unallowable Costs	M	T	
FAR 52.242–13	FAR 42.903	Bankruptcy	M	T	T
FAR 52.243–1	FAR 43.205(a)(1)	Changes—Fixed Price—Alternate I	M	T	T
FAR 52.244–5	FAR 44.204(e)	Competition in Subcontracting	M	T	
1652.244–70	1644.270	Subcontracts	M	T	
FAR 52.245–2	FAR 45.106(b)(1)	Government Property (Fixed Price Contracts)	M	T	T
FAR 52.246–25	FAR 46.805(a)(4)	Limitation of Liability—Services	M	T	
1652.246–70	1646.301	FEHBP Inspection	M	T	T
FAR 52.247–63	FAR 47.405	Preference for U.S.-Flag Air Carriers	M	T	T
FAR 52.249–2	FAR 49.502(b)(1)(i)	Termination for Convenience of the Government—Fixed Price	M	T	T
FAR 52.249–8	FAR 49.504(a)(1)	Default (Fixed-Price Supply and Service)	M	T	T
1652.249–70	1649.101–70	Renewal and Withdrawal of Approval	M	T	T
FAR 52.251–1	FAR 51.107	Government Supply Sources	A	T	
FAR 52.252–2	FAR 52.107(b)	Clauses Incorporated by Reference	M	T	T
FAR 52.252–4	FAR 52.107(d)	Alterations in Contract	M	T	T
FAR 52.252–6	FAR 52.107(f)	Authorized Deviations in Clauses	M	T	T

PART 1653—FORMS [AMENDED]

23. Part 1653 is amended by removing all references to § 53.215–2(b), § 53.301–1412, and SF–1412 in the chart.

[FR Doc. 96–15403 Filed 6–21–96; 8:45 am]
BILLING CODE 6325–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 6101

RIN 3090–AF99

Board of Contract Appeals; Procedure Rules

AGENCY: Board of Contract Appeals, General Services Administration.

ACTION: Proposed rule.

SUMMARY: This document announces the intention of the General Services Administration Board of Contract Appeals (the Board) to issue proposed rules to implement section 5101 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106) (the Act). Section 5101 of the Act, which becomes effective August 8, 1996, eliminates the Board's jurisdiction to hear and decide bid protests regarding procurements of automatic data processing (ADP) equipment and services. The proposed amendments to the Board's rules of procedure, when final, will implement section 5101 by eliminating all references to bid protests in those rules.

The proposed rules also described the techniques intended to shorten and simplify, when appropriate, the formal proceedings normally used by the Board to resolve contract disputes, and support the use of alternative dispute resolution (ADR) in appropriate circumstances by providing that the Board will make a Board Neutral available for an ADR proceeding either before or after the issuance of a decision by a contracting officer of any Government agency if a joint written request is submitted to the Board by the parties.

The Board intends to issue final, revised rules after considering all comments to the proposed amendments. The Board anticipates that, in issuing revised rules, it will provide that the revisions do not apply to protests pending on August 8, 1996, or to any motions or applications resulting from such protests. Such cases would be governed by the rules in effect at the time the underlying protests were filed.

DATES: Written comments must be submitted on or before July 24, 1996.

ADDRESSES: Copies of the proposed rules may be obtained from the Office of the Clerk of the Board, GSA Board of Contract Appeals, 18th & F Streets, N.W., Washington, DC 20405, (202)

500001–0116. Additionally, an electronic version of the text may be obtained from http://www.gsa.gov/gsbca. Written comments may be mailed to Margaret S. Pfunder, GSA Board of Contract Appeals, 18th & F Streets, N.W., Washington, DC 20405, or sent electronically by using the following Internet address: Margaret.Pfunder@gsa.gov.

FOR FURTHER INFORMATION CONTACT: Margaret S. Pfunder, Deputy Chief Counsel, GSA Board of Contract Appeals, telephone (202) 501–0272, facsimile machine (202) 501–3510.

Dated: June 18, 1996.

Stephen M. Daniels,

Chairman.

[FR Doc. 96–15839 Filed 6–21–96; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 594

[Docket No. 89–8; Notice 9]

RIN 2127–AG43

Schedule of Fees Authorized by 49 U.S.C. 30141

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes fees for Fiscal Year 1997 as authorized by 49 U.S.C. 30141 relating to the registration of importers and the importation of motor vehicles not certified as conforming to the Federal motor vehicle safety standards (FMVSS).

NHTSA proposes that the annual fee for the registration of a new importer be increased from $456 to $501, and the annual fee for renewal of registration be increased from $240 to $332. The fee required to reimburse the U.S. Customs Service for bond processing costs would increases by $0.20, from $4.95 to $5.15 per bond.

The fee payable for a determination that nonconforming vehicles are capable of conversion to meet the FMVSS would be increased from $104 to $199 if the determination results from a petition arguing that the nonconforming vehicle is substantially similar to conforming vehicles. With respect to vehicles that have no substantially similar counterpart, the fee rises from $520 to $721. In addition, the fee payable by the importer of each vehicle that benefits by a determination will be increased from $93 to $134, regardless of whether the determination is made pursuant to a petition or by NHTSA on its own initiative.

DATES: Comments are due August 8, 1996. The effective date of the final rule would be October 1, 1996.

ADDRESSES: Comments should refer to Docket No. 89–8; Notice x, and be submitted to : Docket Section, NHTSA, room 5109, 400 Seventh St., SW, Washington, D.C. 10590. Docket hours are from 9:30 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, Office of Safety Assurance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Introduction

On September 29, 1989, NHTSA issued 49 CFR part 594, establishing the initial fees authorized by section 108 of the National Traffic and Motor Vehicle Safety Act, as amended by the Imported Vehicle Safety Compliance Act of 1988, Pub. L. 100–562 (54 FR 40100). These fees were applicable in Fiscal Year 1990 (FY90). 49 U.S.C. 30141(e) (formerly 15 U.S.C. 1397(c)(3)(B)) provides that the amount or rate of fees shall be reviewed and, if appropriate, adjusted at least every 2 years. Further, the fees applicable in any fiscal year shall be established before the beginning of such year. The statute authorizes an annual fee to cover the costs of the importer registration program, an annual fee or fees to cover the cost of making import eligibility determinations, and an annual fee or fees to cover the cost of processing the bond furnished to the Customs Service.

In accordance with the statutory requirements, NHTSA reviewed and adjusted fees for FY91 (55 FR 40664), for FY92–93 (56 FR 49427), and FY 94–96 (58 FR 51021).

As a general statement applicable to consideration of all fees, there has been a slight increase in hourly costs in the past three fiscal years attributable to the approximately 2 percent raise in salaries of employees on the General Schedule that became effective on January 1 in the years 1995, and 1996 (there was a locality raise only in 1994).

Requirements of the Fee Regulation

Section 594.6—Annual Fee for Administration of the Importer Registration Program

Section 30141(a)(3) of Title 49 U.S.C. provides that registered importers must pay ''the annual fee the Secretary of Transportation establishes * * * to pay for the costs of carrying out the registration program for importers * * *.'' The annual fee attributable to the registration program is payable both by new applicants and by registered importers seeking to renew their registration. The reader is referred to the notice of September 29, 1989, for a fuller discussion of the fee and its components.

In accordance with the statutory directive, NHTSA reviewed the existing fees and their bases in an attempt to establish appropriate fees for at least the next fiscal year which would be sufficient to recover the costs of carrying out the registration program for importers. The initial component of the Registration Program Fee is the portion of the fee attributable to processing and action upon registration applications. The agency has determined that this portion of the fee should be decreased from $356 to $301 for new applications, and increased from $100 to $132 for renewals. The higher initial cost is warranted because the average cost of processing a new application is substantially greater than that of its renewal.

Other costs attributable to maintenance of the registration program arise from reviewing a registrant's annual statement and verifying the continuing validity of information already submitted. These costs also include costs attributable to revocation or suspension of a registration.

The total portion of the fee attributable to maintenance of the registration program as estimated by NHTSA is approximately $200, an increase of $100. This reflects the fact that costs have been incurred for processing suspensions or revocations. When this $200 is added to the $301 representing the registration application component, the cost to an applicant equals $501, and is the fee proposed by NHTSA. It represents an increase of $45. When the $200 is added to the $132 representing the renewal component, the cost to a renewing registered importer would be $332. This fee increase is also proposed. It represents an increase of $92.

Sec. 564.6(h) recounts indirect costs that have been estimated at $6.71 per man-hour. This would be raised to $7.07 under the proposal.

Sections 594.7, 594.8—Fees to Cover Agency Costs in Making Importation Eligibility Determinations

Section 30141(a)(3) also requires registered importers to pay ''other fees the Secretary of Transportation establishes to pay for the costs of * * * (B) making the decisions under this subchapter.'' Pursuant to part 593, these

decisions are whether the vehicle sought to be imported is substantially similar to a motor vehicle originally manufactured for import into and sale in the United States, and certified as meeting the FMVSS, and whether it is capable of being readily altered to meet those standards. Alternatively, where there is no substantially similar U.S. motor vehicle, the decision is whether the safety features of the vehicle comply with or are capable of being altered to comply with the FMVSS. These decisions are made in response to petitions submitted by registered importers or manufacturers, or pursuant to the Administrator's initiative. Because a substantially different procedure was adopted for the second year of this program, FY91, the reader is referred to the notice appearing at 55 FR 40664 for a fuller discussion of the cost factors of such determinations.

For FY94–96, NHTSA continued the restructured fee schedule that was adopted for FY91. Under the restructuring, which continues in effect, the fee for a vehicle imported under a decision made on the agency's initiative is payable by the importer of any vehicle covered by that decision. The fee for a vehicle imported under a decision pursuant to a petition is payable in part by the petitioner and in part by importers. However, the fee to be charged for a vehicle is a pro rata share of the costs in making all the eligibility determinations in the fiscal year.

The fees that were adopted in FY91 were retained unchanged for FY92 and FY93; the fees adopted for FY94 were retained unchanged for FY95 and FY96. As the agency noted in the final rule adopting the fees for FY94, only one petition had been granted for a vehicle which is not ''substantially similar'' to a certified model, and there was not yet an average cost figure for this category. Since that time, at least half a dozen other petitions have been received and NHTSA has found that these require noticeably more analysis and, at times, further correspondence with the petitioner in order to have a sufficient data to reach a decision.

Inflation and the small raises under the General Schedule also must be taken into count in the computation of costs.

Accordingly, NHTSA proposes that there be an increase from $104 to $199 in the fee required to accompany a ''substantially similar'' petition, and from $520 to $721 for petitions for vehicles that are not substantially similar and that have no certified counterpart. In the event that a petition requests an inspection of a vehicle, under each petition, that fee will remain at $550.

The importer of each vehicle covered by a petition currently must pay $93 upon its importation, the same fee applicable to those whose vehicles covered by a determination on the agency's initiative (other than Canadian vehicles covered by code VSA–1). This fee would be increased to $134, based upon an increase in administrative costs.

The fee for inspection of a vehicle to verify its conformance status would remain unchanged.

Section 594.9—Fee To Recover the Costs of Processing the Bond

Section 30141(a)(3) also requires a registered importer to pay ''any other fees the Secretary of Transportation establishes * * * to pay for the costs of-(A) processing bonds provided to the Secretary of the Treasury'' upon the importation of a nonconforming vehicle to ensure that the vehicle will be brought into compliance within a reasonable time or if the vehicle is not brought into compliance within such time, that it is exported, without cost to the United States, or abandoned to the United States.

The statute contemplates that NHTSA make a reasonable determination of the cost for the United States Customs Service of processing the bond. In essence, the cost to Customs is based upon an estimate of the time that a GS 9 Step 5 employee spends on each entry, which was judged to be 20 minutes. For a fuller discussion of these costs, the reader is again referred to prior notices of Docket 89–8.

Because of the modest salary and locality raises in the General Schedule that were effective at the beginning of 1994, 1995, and 1996, NHTSA proposes that the current processing fee be increased by $0.20, from $4.95 per bond to $5.15.

Effective Date

The effective date of the final rule would be October 1, 1996.

Rulemaking Analyses

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action was not reviewed under Executive Order 12886. Further, NHTSA has determined that the action is not significant under Department of Transportation regulatory policies and procedures. NHTSA currently anticipates that the costs of the final rule would be so minimal as not to warrant preparation of a full regulatory evaluation. The action does not involve any substantial public interest or controversy. There is no substantial effect upon State and local governments. There is no substantial impact upon a major transportation safety program. Both the number of registered importers and determinations are estimated to be comparatively small. A regulatory evaluation analyzing the economic impact of the final rule adopted on September 29, 1989, was prepared, and is available for review in the docket.

B. Regulatory Flexibility Act

The agency has also considered the effects of this action in relation to the Regulatory Flexibility Act. I certify that this action will not have a substantial economic impact upon a substantial number of small entities. Although entities that currently modify nonconforming vehicles are small businesses within the meaning of the Regulatory Flexibility Act, the agency has no reason to believe that a substantial number of these companies could not pay the fees proposed by this action which would be only modestly increased from those now being paid, and which can be recouped through their customers. The cost to owners or purchasers of altering nonconforming vehicles to conform with the FMVSS may be expected to increase to the extent necessary to reimburse the registered importer for the fees payable to the agency for the cost of carrying out the registration program and making eligibility decisions, and to compensate Customs for its bond processing costs. Governmental jurisdictions will not be affected at all since they are generally neither importers nor purchasers of nonconforming motor vehicles.

C. Executive Order 12612 (Federalism)

The agency has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 ''Federalism'' and determined that the action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The action will not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported through registered importers will not vary significantly from that existing before promulgation of the rule.

E. Civil Justice

This rule will not have any retroactive effect. Under 49 U.S.C. 30103(b),

whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Request for Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be submitted accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation, 49 CFR Part 512.

All comments received on or before the closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. It is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket must enclose a self-addressed stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 594

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR part 594 be amended as follows:

1. The authority citation for part 594 would be revised to read as follows:

Authority: 49 U.S.C. 30141, 30166; delegation of authority at 49 CFR 1.50.

2. The title of part 594 would be changed to read as follows:

PART 594—SCHEDULE OF FEES AUTHORIZED BY 49 U.S.C. 30141

3. Section 594.1 would be revised to read as follows:

§ 594.1 Scope.

This part establishes the fees authorized by 49 U.S.C. 30141.

4. Section 594.4 would be amended by revising its introductory paragraph to read as follows:

§ 594.4 Definitions.

All terms used in this part that are defined in 49 U.S.C. 30102 are used as defined in that section.

* * * * *

5. Section 594.6 would be amended by;

(a) changing the year ''1993'' in paragraphs (d) and to read ''1996,'' and

(b) revising the introductory language in paragraph (a), (c) revising paragraph (b),

(c) revising the final sentence of paragraph (h); and

(d) revising paragraph (i)

to read as follows:

§ 594.6 Annual fee for administration of the registration program.

(a) Each person filing an application to be granted the status of a Registered Importer pursuant to part 592 of this chapter on or after October 1, 1996, shall pay an annual fee of $501, as calculated below, based upon the direct and indirect costs attributable to: * * *

* * * * *

(b) That portion of the initial annual fee attributable to the processing of the application for applications file on and after October 1, 1996, is $301. The sum of $301, representing this portion, shall not be refundable if the application is denied or withdrawn.

* * * * *

(h) * * * This cost is $7.07 per man-hour for the period beginning October 1, 1996.

(i) Based upon the elements, and indirect costs of paragraphs (f), (g), and (h) of this section, the component of the initial annual fee attributable to administration of the registration program, covering the period beginning October 1, 1996, is $200. When added to the costs of registration of $301, as set forth in paragraph (b) of this section, the costs per applicant to be recovered through the annual fee are $501. The annual renewal registration fee for the period beginning October 1, 1996, is $332.

6. Section 594.7 would be amended by revising the first two sentences of paragraph (e) to read as follows:

§ 594.7 Fee for filing petition for a determination whether a vehicle is eligible for importation.

* * * * *

(e) For petitions filed on and after October 1, 1996, the fee payable for a petition seeking a determination under paragraph (a)(1) of this section is $199. The fee payable for a petition seeking a determination under paragraph (a)(2) of this section is $721. * * *

* * * * *

7. Section 594.8 would be amended by revising the first sentence in paragraph (b) and in paragraph (c) to read as follows:

§ 594.8 Fee for importing a vehicle pursuant to a determination by the Administrator.

* * * * *

(b) If a determination has been made pursuant to a petition, the fee for each vehicle is $134. * * *

(c) If a determination has been made pursuant to the Administrator's initiative, the fee for each vehicle is $134. * * *

8. Section 594.9(c) would be revised to read as follows:

§ 594.9 Fee for reimbursement of bond processing costs.

* * * * *

(c) The bond processing fee for each vehicle imported on and after October 1, 1996, for which a certificate of conformity is furnished, is $5.15.

Issued on: June 14, 1996.

Michael B. Brownlee,

Associate Administrator for Safety Assurance.

[FR Doc. 96–15732 Filed 6–21–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC22

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Endangered Status for Barton Springs Salamander

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: The Fish and Wildlife Service provides notice that the comment period on the proposed endangered status for Barton Springs salamander (*Eurycea sosorum*) is reopened.

DATES: Comments from all interested parties must be received by July 24, 1996. Although every effort will be made to consider comments received up to July 24, 1996 the Fish and Wildlife Service may be required to close the comment period in advance of July 24, 1996 in order to comply with any orders of the court in *Save Our Springs Legal Defense Fund* v. *Babbitt,* Civil No. MO–95–CA–230 (W.D. Tex.), ongoing litigation involving this rulemaking.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Field Supervisor (see **ADDRESSES** section) (512/490–0057).

SUPPLEMENTARY INFORMATION: A proposed rule to list the Barton Springs salamander as endangered was published on February 17, 1994 (59 FR 7968). The primary threat to this species is contamination of waters in the portion of the Edwards Aquifer that feeds the springs, due to catastrophic events (such as hazardous materials spills) and chronic degradation resulting from urban activities. Also of concern are reduced groundwater supplies due to increased groundwater withdrawal and pool maintenance operations where the salamander occurs. This proposal, if made final, will implement Federal protection provided by the Act for the Barton Springs salamander.

The comment period on this proposed rule originally closed April 18, 1994. It was reopened on May 26, 1994, and again on March 10, 1995. The last comment period closed May 17, 1995. On April 10, 1995, Public Law 104–06 imposed a moratorium preventing addition of any species to the Threatened and Endangered Species List. Through a series of moratoria, funding restrictions, and continuing resolutions that prohibition remained in effect until April 26, 1996. On that date, the Omnibus Appropriations Act, which provided $4,000,000 to the Service to fund listing activities for the remainder of fiscal year 1996, was enacted (Pub. L. No. 104–134, 110 Stat. 1321, (1996)). Because the Service expended $233,000 of this amount during the first six months of 1996 under the rates of operation provided by the various continuing resolutions, $3,767,000 remains for the balance of the fiscal year (61 FR 24722, 24723; May 16, 1996). The Omnibus Appropriations Act contained a moratorium on certain listing activities but provided that the President could waive the moratorium. On April 26, 1996, President Clinton suspended the provision limiting implementation of Section 4 of the Act (61 FR 24667; May 16, 1996).

On May 16, 1996, the Service published guidance which set priorities for the listing program in order to ensure that the scarce resources available through the end of the fiscal year would provide the greatest conservation benefit possible (61 FR 24722; Final Listing Priority Guidance. This guidance identified emergency listings as Tier 1 activities, in other words, the highest priority activity the Service will undertake during the remainder of the fiscal year. Completing final determinations for existing proposals, such as the Barton Springs salamander, are Tier 2 activities, which will be undertaken to the extent resources are available. Which final determinations will be completed depends on a number of factors including magnitude and imminence of threats to the species. *Id.* at 24727.

Region 2 of the Service, which includes the area inhabited by the Barton Springs salamander, conducted a prioritization review in accordance with the Notice of Final Listing Priority Guidance. This process considered all pending actions to determine whether affected species faced an emergency situation as defined by Section 4(b)(7) of the Act, and the Service's implementing regulations. The Barton Springs salamander has been recommended by Region 2 as its number one priority for final determination. In determining which species to focus its listing resources on, Region 2 evaluated the threats to all species that have been proposed for listing. Region 2 determined that while the Barton Springs salamander is its number one listing priority, the threats to the species are not severe enough to warrant emergency status. However, the Service continues to monitor the status of the Barton Springs salamander and other Edwards Aquifer species in case emergency listing becomes necessary. Having given the Barton Springs salamander top priority, Region 2 has begun, as funds are now again available, work on making a final decision on this proposed listing.

The Service's Final Listing Priority Guidance notes that the inaction forced upon the Service by the moratorium and funding limitations may result in a need to reopen comment periods due to unresolved questions or the potential for the existence of new information. (61 FR 24727). (See also 61 FR 9651, 9653) (March 11, 1996; interim guidance). Pursuant to this guidance, it is necessary to reopen the comment period to ensure the Service has the best scientific and commercial information currently available to make a final listing determination regarding the Barton Springs salamander.

The last comment period on the proposal to list the Barton Springs salamander closed on May 17, 1995, over one year ago. The Service is aware of new information relevant to listing this species dated after the close of the comment period. Specifically, proposed regulatory protection under State authorities including water quality protection zones, nonpoint source pollution programs, monitoring, and Edwards Aquifer-specific actions have been brought to the Service's attention. Since the close of the comment period, the Service has learned that the State of Texas has proposed and accepted comments on new regulations governing development in the Barton Springs watershed that would require the state to review and approve water quality plans submitted for new developments. The Service has also learned that the Texas Natural Resource Conservation Commission, the Texas Parks and Wildlife Department, and the Texas Department of Transportation have entered into a Memorandum of Understanding concerning water quality protections during highway construction. These efforts are aimed at protecting water quality threats, to which were identified as one of the primary factors threatening the existence of the Barton Springs salamander in the proposal. (59 FR 7968, 7972). Information on these regulatory initiatives does not currently exist in the administrative record. To evaluate effectively whether the existing regulatory structure may adequately protect the species, the Service must obtain further information on these developments. The Act requires the Service to base listing decisions on the ''best scientific and commercial information available,'' 16 U.S.C. 1533(b)(1)(A), and to consider the ''inadequacy of existing regulatory mechanisms'' as a factor upon which to base listing decisions, *id.* 1533(a)(1)(D). Given these facts, the Service believes it has an obligation to reopen the public

comment period on this proposal, while keeping careful watch on the species' status.

In a letter dated June 3, 1996, Valarie Bristol, Travis County Commissioner for the County encompassing the Barton Springs segment of the Edwards Aquifer and Barton Springs itself, requested that the comment period be reopened in order to accept information regarding the Balcones Canyonlands Preserve, the Loop 1/Highway 290 Task Force, and other information. This letter is printed in its entirety here for the information of potential commenters.

Valarie Bristol,
Travis County Commissioner—Precinct 3, Travis County Administration Building, 314 W. 11th Street, Room 500, P.O. Box 1748, Austin, Texas 78767, 473–9333
June 3, 1996.

Honorable Bruce Babbitt,
Secretary of the Interior, 1849 C Street, NW, Mailstop 7229, Washington, D.C. 20240

Dear Secretary Babbitt: As a member of the Travis County Commissioners' Court, I represent the portion of the county which includes the Barton Springs segment of the Edwards Aquifer, the five creeks which overlay it, and the outflow at Barton Springs. This karst system of water flow is a very special treasure and needs thoughtful protection of its water quality.

The listing of the Barton Springs salamander under the Endangered Species Act as an endangered species is a serious decision that requires full analysis. I am asking that the comment period on the listing, which was closed in 1994, be re-opened for a period to allow all significant information which has occurred since then to become part of the decision.

One major event which has occurred has been the formation of the Balcones Canyonlands Preserve which sets aside over 30,000 acres in Travis County, of which 4,000 acres are in the Barton Creek watershed. The Balcones is an example of a public/private partnership that brought together the environmental and landowner communities in an unprecedented level of cooperation for mutual benefit to preserve eight endangered species.

The Loop 1/Highway 290 Task Force is another example of citizens and governments trying to balance growth issues (in this case a highway expansion) with water quality over the aquifer recharge zone. State Representative Sherri Greenberg and I serve as co-chairs of the Loop 1/Highway 290 Task Force and we have been gathering extensive information on the water quality issues surrounding all highway construction in the aquifer area.

Travis County has completed a road project which included an EPA funded vegetation experiment to test the best method for cleaning road area runoff.

These are only a few occurrences whose information may be of importance in the decision on the salamander. I hope that the comment period can be re-opened to gather all the relevant information.

I deeply believe that this community wants to do its part in understanding and protecting the clear, clean water of the Barton Springs segment of the Edwards Aquifer.

Sincerely,

Valarie Scott Bristol,
Travis County Commissioner, Precinct Three.

The Texas Natural Resource Conservation Commission has also requested that the comment period be reopened, citing its regulatory initiatives described above. This letter is also printed in its entirety here for the information of potential commenters.

Texas Natural Resource Conservation Commission
June 3, 1996.

The Honorable Bruce Babbitt,
Secretary of the Interior, 1849 C Street N.W., Main Interior Building, Room 6151, Washington, D.C. 20240

Re: Proposed Listing of Barton Springs Salamander

Dear Secretary Babbitt: The purpose of this letter is to request that you reopen the comment period concerning the proposed listing of the Barton Springs Salamander. If the comment period is reopened, the State of Texas will submit to the Fish and Wildlife Service additional information regarding state and local efforts to protect this species and its habitat. TNRCC staff believes there is a substantial amount of information which has not been considered, much of which was not even available during the original comment period.

There are numerous examples of state and local regulations designed to protect water quality. Some of these were in place at the time of the original listing proposal and some have been created or modified subsequent to the proposal and some even subsequent to closing of the comment period. For example, TNRCC has published proposed rules governing water quality protection zones and will soon be publishing proposed revisions to the 'Edwards Aquifer Rules'. Both of these rule packages are scheduled to be considered by the Commission early this fall. Other examples include highway construction techniques and water quality monitoring resulting from legislation enacted last year. We do not believe these have been properly or adequately taken into account as required by the Act, particularly in light of the magnitude of the decision on the proposed listing.

Thank you for your consideration of this request.

Very truly yours,

Barry R. McBee,
Chairman.

The Service is thus reopening the comment period to allow commenters to provide any additional information or comments they have on the proposed listing. Although every effort will be made to consider comments received up to July 24, 1996, the Fish and Wildlife Service may be required to close the comment period in advance of July 24, 1996 in order to comply with any orders of the court in *Save Our Springs Legal Defense Fund* v. *Babbitt*, Civil No. MO–95–CA–230 (W.D. Tex.), ongoing litigation involving this rulemaking. Comments submitted during previous comment periods will be considered and need not be resubmitted.

Author

The primary author of this notice is Steven Helfert (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: June 17, 1996.

John G. Rogers,
Acting Director, Fish and Wildlife Service.

[FR Doc. 96–15899 Filed 6–21–96; 8:45 am]
BILLING CODE 4310–55–P

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50 CFR Part 32

RIN 1018–AD76

1996–97 Refuge-Specific Hunting and Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to amend certain regulations that pertain to migratory game bird hunting, upland game hunting, big game hunting and sport fishing on individual national wildlife refuges for the 1996–97 seasons. Refuge hunting and fishing programs are reviewed annually to determine whether the individual refuge regulations governing these programs should be modified, deleted or have additions made to them. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitat may warrant modifications ensuring continued compatibility of hunting and fishing with the purposes for which individual refuges were established.

DATES: Comments on this proposed rule will be accepted on or before July 24, 1996.

ADDRESSES: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 670 ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Stephen R. Vehrs, at the above address; Telephone (703) 358–2397.

SUPPLEMENTARY INFORMATION: 50 CFR part 32 contains provisions governing hunting and fishing on national wildlife

refuges. Hunting and fishing are regulated on refuges to:

- Ensure compatibility with refuge purposes;
- Properly manage the fish and wildlife resource;
- Protect other refuge values; and
- Ensure refuge user safety.

On many refuges, the Service policy of adopting State hunting and fishing regulations is adequate in meeting these objectives. On other refuges, it is necessary to supplement State regulations with more restrictive Federal regulations to ensure that the Service meets its management responsibilities, as outlined under the section entitled ''Statutory Authority.'' Refuge-specific hunting and fishing regulations may be issued only after a wildlife refuge is opened to migratory game bird hunting, upland game hunting, big game hunting or sport fishing through publication in the Federal Register. These regulations may list the wildlife species that may be hunted or are subject to sport fishing, seasons, bag limits, methods of hunting or fishing, descriptions of open areas, and other provisions as appropriate. Previously issued refuge-specific regulations for hunting and fishing are contained in 50 CFR part 32. Many of the amendments to these sections are being promulgated to standardize and clarify the existing language of these regulations.

Request for Comments

Department of the Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. A 30-day comment period is specified in order to facilitate public input. Accordingly, interested persons may submit written comments concerning this proposed rule to the person listed above under the heading **ADDRESSES.** All substantive comments will be reviewed and considered.

Statutory Authority

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, Section 4(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior to permit the use of any area within the Refuge System for any purpose, including but not limited to, hunting, fishing and public recreation, accommodations and access, when he determines that such uses are compatible with the major purpose(s) for which the area was established.

The Refuge Recreation Act (RRA) authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established. The NWRSAA and the RRA also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

Hunting and sport fishing plans are developed for each existing refuge prior to opening it to hunting or fishing. In many cases, refuge-specific regulations are developed to ensure the compatibility of the programs with the purposes for which the refuge was established. Initial compliance with the NWRSAA and the RRA has been ensured for hunting and sport fishing on newly acquired refuges through an interim determination of compatibility made at the time of acquisition. This has ensured that the determinations required by these acts have been made prior to the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR part 32. Continued compliance is ensured by the development of long-term hunting and sport fishing plans and by annual review of hunting and sport fishing programs and regulations.

The Service has determined that this action is in accordance with the provisions of all applicable laws, is consistent with principles of sound fish and wildlife management, helps implement Executive Order 12962 (Recreational Fisheries), and is otherwise in the public interest by providing additional recreational opportunities at national wildlife refuges. Sufficient funds will be available within the refuge budgets to operate the hunting and sport fishing programs as proposed.

Paperwork Reduction Act

This regulation has been examined under the Paperwork Reduction Act of 1995 and has been found to contain no information collection requirements.

Economic Effect

Service review has revealed that the rulemaking will increase hunter and fishermen visitation to the surrounding area of the refuges before, during or after the recreational uses, compared to the refuge being closed to these recreational uses.

These refuges are generally located away from large metropolitan areas. Businesses in the area of the refuges consist primarily of small family owned stores, restaurants, gas stations and other small commercial enterprises. In addition, there are several small commercial and recreational fishing and hunting camps and marinas in the general areas. This proposed rule would have a positive effect on such entities; however, the amount of revenue generated is not large.

Many area residents enjoy a rural lifestyle that includes frequent recreational use of the abundant natural resources of the area. A high percentage of the households enjoy hunting, fishing, and boating in area wetlands, rivers and lakes. Refuge lands were not generally available for general public use prior to government acquisition; however, they were fished and hunted upon by friends and relatives of the landowners, and some were under commercial hunting and fishing leases. Many nearby residents also participate in other forms of nonconsumptive outdoor recreation, such as biking, hiking, camping, birdwatching, canoeing, and other outdoor sports.

Economic impacts of refuge fishing and hunting programs on local communities are calculated from average expenditures in the ''1995 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation''. In 1995, 42 million U.S. residents 16 years old and older hunted and/or fished. More specifically, 37 million fished and 14.5 million hunted. Those who both fished and hunted account for the 9.5 million overage. Nationwide expenditures by sportsmen totaled $42 billion. Trip-related expenditures for food, lodging, and transportation were $16 billion or 37 percent of all fishing and hunting expenditures; equipment expenditures amounted to $19 billion, or 46 percent of the total; other expenditures such as those for magazines, membership dues, contributions, land leasing, ownership, licenses, stamps, tags, and permits accounted for $6.9 billion, or 16 percent of all expenditures. Overall, anglers spent an average of $41 per day. For each day of hunting, big game hunters averaged spending $40, small game hunters $20, and migratory bird hunters $33.

At these 40 National Wildlife Refuges in 24 states, 816,000 fishermen are expected to spend $33.5 million annually in pursuit of their sport, while an estimated 203,000 hunters will spend $6.7 million annually hunting on the refuges. While many of these fishermen and hunters already make such expenditures prior to the refuge opening, minor amounts of these additional expenditures are directly due

to the land now being open to the general public.

This rulemaking will have a small but positive impact on local economies and is not subject to Office of Management and Budget review under Executive Order 12866. In addition, a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) has revealed that the rulemaking would increase visitation and expenditures in the surrounding area of the refuges. The rulemaking would not have a significant effect on a substantial number of small entities in the area, such as businesses, organizations and governmental jurisdictions.

Unfunded Mandates

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 et seq., that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) is ensured when hunting and sport fishing plans are developed, and the determinations required by this act are made prior to the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR part 32. The changes in hunting and fishing herein proposed were reviewed with regard to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and found to either have no affect on or are not likely to adversely affect listed species or critical habitat. The amendment of refuge-specific hunting and fishing regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular national wildlife refuge. The Service exclusion found at 516 DM 6, App.1.4 B(5) is employed here as these amendments are considered ''[m]inor changes in the amounts or types of public use on FWS or State-managed lands, in accordance with regulations, management plans, and procedures.'' These refuge-specific hunting and fishing revisions to existing regulations simply qualify or otherwise define an existing hunting or fishing activity, for purposes of resource management. These documents are on file in the offices of the Service and may be viewed by contacting the primary author noted below. Information regarding hunting and fishing permits and the conditions that apply to individual refuge hunts, sport fishing activities, and maps of the respective areas are retained at refuge headquarters and can be obtained from the regional offices of the U.S. Fish and Wildlife Service at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas. Assistant Regional Director—Refuges and Wildlife U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1829.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725–3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico and the Virgin Islands. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; Telephone (404) 679–7152.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035; Telephone (413) 253–8550.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236–8145.

Region 7—Alaska. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3545.

Primary Author

Stephen R. Vehrs, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, Part 32 of Chapter I of Title 50 of the *Code of Federal Regulations* is proposed to be amended as follows:

PART 32—[AMENDED]

1. The authority citation for Part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

§ 32.7 [Amended]

2. Section 32.7 *List of refuge units open to hunting and/or fishing,* is amended by alphabetically adding the listings ''Windom Wetland Management District'' to the State of Minnesota; ''William L. Finley National Wildlife Refuge'' to the State of Oregon; and ''Upper Mississippi River National Wildlife and Fish Refuge'' to the State of Wisconsin; and revising the existing name of ''Patuxent Wildlife Research Center'' to read ''Patuxent Research Refuge'' in the State of Maryland.

3. Section 32.23 *Arkansas* is amended by adding paragraph D.3. to Cashe River National Wildlife Refuge to read as follows:

§ 32.23 Arkansas.

* * * * *

Cashe River National Wildlife Refuge.

* * * * *

D. Sport Fishing. * * *

* * * * *

3. Fishing and frogging is permitted in accordance with refuge regulations and applicable state fishing and frogging regulations.

* * * * *

4. Section 32.24 *California* is amended by revising paragraph A.7., of Lower Klamath National Wildlife Refuge; and by revising paragraph A.2., of Salton Sea National Wildlife Refuge to read as follows:

§ 32.24 California.

* * * * *

Lower Klamath National Wildlife Refuge.

A. Hunting of Migratory Game Birds. * * *

* * * * *

7. Only nonmotorized boats and boats with electric motors are permitted on units 4b and 4c from the start of hunting season through November 30. Motorized boats are permitted on units 4b and 4c from December 1 through the end of hunting season.

* * * * *

Salton Sea National Wildlife Refuge.

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Hunters must hunt from assigned blinds on the Union Tract and within 100 feet (.9144 meters) of blind sites on the Hazard

Tract, except when shooting to retrieve crippled birds.

* * * * *

5. Section 32.32 *Illinois* is amended by removing paragraph A.4., and revising paragraphs D.2. and D.5 of Chautauqua National Wildlife Refuge; by revising paragraphs C.1. and D.1. of Crab Orchard National Wildlife Refuge; by revising Mark Twain National Wildlife Refuge; by revising paragraphs D.1., D.2., D.3., adding paragraph D.4. of Meredosia National Wildlife Refuge; and revising paragraph A.1., adding paragraph A.3., revising paragraphs B.1., B.2. and B.3.; revising paragraphs C.1., C.2., and C.3. of Upper Mississippi River Wildlife and Fish Refuge to read as follows:

§ 32.32 Illinois.

* * * * *

Chautauqua National Wildlife Refuge.

* * * * *

D. Sport Fishing. * * *

* * * * *

2. Anglers must not use more than two poles and each pole must not have more than two hooks or lures attached while fishing in the Kikunessa Pool of Chautauqua National Wildlife Refuge.

* * * * *

5. Weis Lake on the Cameron-Billsbach Unit of Chautauqua National Wildlife Refuge is closed to all public entry from October 16 through January 14, to provide sanctuary for migratory birds.

Crab Orchard National Wildlife Refuge.

* * * * *

C. Big Game Hunting. * * *

1. A special permit issued by the Illinois Department of Natural Resources is required.

* * * * *

D. Sport Fishing. * * *

1. Fishing from boat is permitted all year west of Wolf Creek Road. East of Wolf Creek Road fishing from boats is permitted from March 15 through September 30. Fishing from the bank east of Wolf Creek Road is permitted all year, but only at the Wolf Creek and Route 148 causeways. Trotlines and jugs west of Wolf Creek Road must be removed from sunrise to sunset from Memorial Day through Labor Day. Trotlines and jugs on the entire lake must be removed on the last day they are used. They must be anchored only with portable weights which are removed along with the trotlines and jugs. It is illegal to use stakes or to employ any floatation device which has previously contained any petroleum based materials or toxic substances. All noncommercial fishing methods are permitted except those requiring underwater breathing apparatus.

* * * * *

Mark Twain National Wildlife Refuge.

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted on designated areas of the refuge subject to posted regulations.

B. Upland Game Hunting. Hunting of upland game is permitted on designated areas of the refuge subject to posted regulations.

1. Only nontoxic shot may be used or possessed while hunting all permitted birds, except wild turkeys. The possession and use of lead shot is still permitted for wild turkey hunting.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to posted regulations.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to posted regulations.

Meredosia National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Sport fishing is allowed on all refuge waters during daylight hours from January 15 through October 15.

2. From October 16 through January 14, fishing is permitted south of Carver Lake by foot access only.

3. Private boats may not be left in refuge waters overnight.

4. Motorboats are restricted to ''slow speed/minimum wake.''

Upper Mississippi River National Wildlife and Fish Refuge

A. Hunting of Migratory Game Birds. * * *

1. Hunting of all migratory birds is prohibited on refuge closed areas posted ''Area Closed'', on the Goose Island ''No Hunting'' zone in Pool 8, and on the Upper Halfway Creek Marsh ''No Hunting'' zone in Pool 7.

* * * * *

3. Hunters may only use and possess nontoxic shot when hunting for any permitted migratory bird.

B. Upland Game Hunting. * * *

1. Hunting or possession of firearms are prohibited between March 15 and the opening of the State fall hunting seasons except that hunting of wild turkey is permitted during the State spring turkey season.

2. Hunting is permitted on refuge areas posted ''Area Closed'' beginning the day after the close of the applicable State duck hunting season until season closure or March 15, whichever occurs first, except that hunting of wild turkey is permitted during the State spring wild turkey season.

3. Hunting is prohibited at all times on the Goose Island ''No Hunting'' zone in Pool 8, and Upper Halfway Creek Marsh ''No Hunting'' zone in Pool 7.

* * * * *

C. Big Game Hunting. * * *

1. Hunting is permitted until season closure or March 15, whichever date occurs first.

2. Hunting is permitted on refuge areas posted ''Area Closed'' beginning the day after the close of the applicable State duck hunting season until season closure or March 15, whichever date occurs first.

3. Hunting is prohibited at all times on the Goose Island ''No Hunting'' zone in Pool 8 and Upper Halfway Creek Marsh ''No Hunting'' zone in Pool 7.

* * * * *

6. Section 32.34 *Iowa* is amended by removing paragraph C.2., and redesignating paragraphs C.3. and C.4. as paragraphs C.2. and C.3. of Desoto National Wildlife Refuge; and by removing paragraphs C.6. and C.7. of Driftless Area National Wildlife Refuge; and revising the introductory text of paragraph B. and paragraph B.2. of Walnut Creek National Wildlife Refuge to read as follows:

§ 32.34 Iowa.

* * * * *

DeSoto National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

2. The construction or use of permanent blinds, platforms or ladders is not permitted.

3. All stands must be removed from the refuge by the close of the season.

* * * * *

Walnut Creek National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of ringnecked pheasants, bobwhite quail, cottontail rabbits, and squirrels is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

2. Hunting is permitted from opening of state season and will close at the dates posted by the refuge manager.

* * * * *

7. Section 32.36 *Kentucky* is amended by revising paragraphs A., B. and C., of Ohio River Islands National Wildlife Refuge to read as follows:

§ 32.36 Kentucky.

* * * * *

Ohio River Islands National Wildlife Refuge

A. Hunting of Migratory Game Birds. Migratory game bird hunting is permitted on designated areas of the refuge subject to the following conditions:

1. Each hunter must have in his possession a current copy of the Ohio River Islands National Wildlife Refuge Hunting Regulations Leaflet while participating in a refuge hunt.

B. Upland Game Hunting. The hunting of rabbit and squirrel is permitted on designated areas of the refuge subject to the following conditions:

1. The use of dogs for pursuit while rabbit hunting is prohibited.

2. The taking of squirrel and rabbit is restricted to shotgun only.

3. Each hunter must have in his possession a current copy of the Ohio River Islands National Wildlife Refuge Hunting Regulations Leaflet while participating in a refuge hunt.

4. Hunters will possess and use, while in the field, only nontoxic shot.

C. Big Game Hunting. The hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Only archery hunting is permitted.
2. Organized deer drives by two or more hunters are prohibited. A drive is hereby defined as the act of chasing, pursuing, disturbing or otherwise directing deer so as to make the animals more susceptible to harvest.
3. Baiting for deer on refuge lands is prohibited.
4. Each hunter must have in his possession a current copy of the Ohio River Islands National Wildlife Refuge Regulations Leaflet while participating in a refuge hunt.

* * * * *

8. Section 32.37 *Louisiana* is amended by revising paragraph C.1., of D'Arbonne National Wildlife Refuge; by revising paragraph A. of Lake Ophelia National Wildlife Refuge; and revising paragraph C.1. of Upper Ouachita National Wildlife Refuge to read as follows:

§ 32.37 Louisiana.

* * * * *

D'Arbonne National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

1. Either-sex deer hunting with firearms is permitted during the second and third either-sex firearms seasons for Union Parish.

* * * * *

Lake Ophelia National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following condition:

1. Daily permits are required.

* * * * *

Upper Ouachita National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

1. Either-sex deer hunting with firearms is permitted during the second and third either-sex firearms seasons for Union Parish.

* * * * *

9. Section 32.38 *Maine* is amended by revising paragraphs A., B. and C., of Rachel Carson National Wildlife Refuge to read as follows:

§ 32.38 Maine.

* * * * *

Rachel Carson National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, geese, coots, woodcock and snipe is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.
2. Personal property must be removed from the refuge after each day's hunt.

B. Upland Game Hunting. Hunting of upland game birds, gray squirrel, cottontail rabbit, snowshoe hare, fox and coyote is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.
2. Fox and coyote may be hunted only during the State firearm deer season.
3. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches (10.16 square meters) of solid-colored hunter orange clothing or material.
4. Hunters will possess and use, while in the field, only nontoxic shot.

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.
2. Hunters during firearms big game season must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches (10.16 square meters) of solid-colored hunter orange clothing or material.

* * * * *

10. Section 32.39 *Maryland* is amended by revising the refuge heading, the introductory text of paragraphs A., B. and C.; and revising paragraph D., of Patuxent Research Refuge, to read as follows:

§ 32.39 Maryland.

* * * * *

Patuxent Research Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

B. Upland Game Hunting. Hunting of upland game is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

D. Sport Fishing. Fishing is permitted on designated areas of the refuge at designated times subject to the following conditions:

1. Open fishing areas are delineated on a map available at the refuge.
2. Fresh water fishing and boating laws of the State of Maryland apply to include opening/closing of seasons and creel limits.
3. Hook and line tackle and baits permitted by Maryland law, except no live minnows or other fish may be used for bait.
4. Special provisions: Cash Lake, a 54 acre lake located on the South Tract requires a federal permit to fish, and a limit of 25 daily permits will be issued. Persons may request a permit application by contacting: National Wildlife Visitor Center, Laurel, Maryland, during normal working hours. Each request must include the person's name, address, and phone number, and the model, year and license number of the vehicle that will drive to the refuge. Requests may be made 1 week prior to the requested fishing date. Each permit shall authorize the permit holder to be accompanied by one licensed angler or up to two children under the age of 16. Open season is June 15 through October 15: 6 a.m. to legal sunset daily. Species permitted to be taken: Bass, pickerel, catfish, and sunfish. Daily creel limits: bass, catch and release only; pickerel, catch and release only except keeping of one pickerel greater than 15 inches in length is permitted; sunfish and catfish, 15 per day total fish limit. Boats may be used by permittees subject to the following conditions: no gasoline motors permitted; boats may not be trailered to the water; boats other than canoes may not exceed 14 feet; sailboats and kayaks are not permitted.

11. Section 32.40 *Massachusetts* is amended by revising paragraph C., of Parker River National Wildlife Refuge to read as follows:

§ 32.40 Massachusetts.

* * * * *

Parker River National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. A refuge permit is required.

* * * * *

12. Section 32.42 *Minnesota* is amended by revising introductory text of paragraph B., of Rice Lake National Wildlife Refuge; by adding in alphabetical order Windom Wetland Management District to read as follows:

§ 32.42 Minnesota.

* * * * *

Rice Lake National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of ruffed grouse, spruce grouse, grey and fox squirrels, cottontail rabbit and snowshoe hare is permitted on designated areas of the refuge.

* * * * *

Windom Wetland Management District

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted throughout the district except that no hunting is permitted on the Worthington Waterfowl Production Area in Nobles County.

B. Upland Game Hunting. Upland game hunting is permitted throughout the district except that no hunting is permitted on the Worthington Waterfowl Production Area in Nobles County.

C. Big Game Hunting. Big game hunting is permitted throughout the district except that no hunting is permitted on the Worthington Waterfowl Production Area in Nobles County.

D. Sport Fishing. Fishing is permitted throughout the district.

13. Section 32.43 *Mississippi* is amended by revising paragraph D., of Dahomey National Wildlife Refuge to read as follows:

§ 32.43 Mississippi.

* * * * *

Dahomey National Wildlife Refuge

* * * * *

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following condition:

1. Permits are required.

* * * * *

14. Section 32.44 *Missouri* is amended by revising paragraphs B., C. and D., of Mingo National Wildlife Refuge to read as follows:

§ 32.44 Missouri.

* * * * *

Mingo National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Upland game hunting is permitted on designated areas of the refuge subject to posted regulations.

C. Big Game Hunting. Big game hunting is permitted on designated areas of the refuge subject to posted regulations.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to posted regulations.

* * * * *

15. Section 32.47 *Nevada* is amended by revising paragraph B., of Ash Meadows National Wildlife Refuge; and by revising paragraphs D.2, D.4., D.5., and D.8. of Ruby Lake National Wildlife Refuge to read as follows:

§ 32.47 Nevada

* * * * *

Ash Meadows National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of quail, cottontail rabbits, and jackrabbits is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of cottontail rabbits and jackrabbits is permitted only during the State quail hunting season.

2. Only shotguns are permitted.

* * * * *

Ruby Lake National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

* * * * *

2. Only dike fishing is permitted in the areas north of the Brown Dike and east of the Collection Ditch with the exception that fishing by wading and from personal flotation devices (float tubes) is permitted in Unit 21.

* * * * *

4. Annually, beginning June 15 and continuing until December 31, motorless boats and boats with battery powered electric motors are permitted only on the South Marsh.

5. Annually, beginning August 1 and continuing until December 31, boats propelled with a motor or combination of motors in aggregate not to exceed 10 horsepower rating are permitted on the South Marsh.

* * * * *

8. Bank fishing in the South Marsh is only permitted at Brown Dike, the Main Boat Landing, and Narciss Boat Landing.

* * * * *

16. Section 32.50 *New Mexico* is amended by revising paragraphs A.1. and D., of Bitter Lake National Wildlife Refuge to read as follows:

§ 32.50 New Mexico.

* * * * *

Bitter Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. Hunting is permitted only on Tuesdays, Thursdays, and Saturdays of each week until 1 p.m.

* * * * *

D. Sport Fishing. [Reserved]

* * * * *

17. Section 32.52 *North Carolina* is amended by revising paragraphs C. and D.3., of Mattamuskeet National Wildlife Refuge; and revising Pee Dee National Wildlife Refuge to read as follows:

§ 32.52 North Carolina.

* * * * *

Mattamuskeet National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition:

1. Permits are required.

D. Sport Fishing. * * *

* * * * *

3. Herring (alewife) dipping is not permitted.

* * * * *

Pee Dee National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of mourning doves is permitted on designated areas of the refuge subject to the following condition:

1. Permits are required.

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition:

1. Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition:

1. Permits are required and special quota permits are required for gun deer hunts.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing with a pole and line or rod and reel is permitted from March 15 to October 15 during daylight hours only.

2. Boats may be used in Andrews Pond, Beaver Ponds, and Arrowhead Lake only.

3. Only electric motors are permitted in refuge waters.

4. The possession and/or use of trotlines, set hooks, gigs, yo-yo's, jug-lines, limblines, nets, seines, fish traps, and other similar equipment is prohibited on the refuge.

5. The possession and/or use of minnows as bait is prohibited on the refuge.

6. Frogging and turtling is prohibited.

7. Certain fishing areas may be closed at anytime for management purposes.

* * * * *

18. Section 32.55 *Oklahoma* is amended by revising paragraphs A., B. and C., of Deep Fork National Wildlife Refuge; and by revising paragraphs A., B.1., B.2., C. and D.1.; adding paragraphs B.3, B.4., B.5., and D.4., of Sequoyah National Wildlife Refuge to read as follows:

§ 32.55 Oklahoma.

* * * * *

Deep Fork National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of squirrel is permitted on portions of the refuge in accordance with State hunting regulations subject to the following exceptions and conditions:

1. Refuge squirrel season will be closed from October 1 through the end of rifle deer season.

2. Shotguns only with steel shot may be used.

3. Dogs may be used for squirrel hunting, but must remain under control of the hunter at all times.

4. Hunting maps and/or posted signs will be used to delineate open and closed areas.

5. Off-road vehicles are prohibited.

C. Big Game Hunting. White-tailed deer hunting is permitted on designated portions of Deep Fork NWR subject to the following conditions:

1. Permits and payment of fees are required.

2. Off-road vehicle use is prohibited.

3. Each hunter entering the refuge must possess a refuge permit.

* * * * *

Sequoyah National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of waterfowl, dove, coots, rail, snipe and woodcock is permitted on designated areas of the refuge subject to the following conditions:

1. The Sequoyah National Wildlife Refuge is open during seasons, dates, and times as posted by signs and/or indicated on refuge leaflets, special regulations, permits, and maps.

2. All hunters shall possess and use, while in the field, only nontoxic shot.

3. Pits and permanent blinds are not permitted.

4. Neither hunters nor dogs may enter closed areas to retrieve game.

5. Hunting is not allowed within 50 ft. (15.24 meters) of designated roads or parking areas.

6. Only shotguns and bows and arrows (excluding broadhead arrows) are permitted.

7. Decoys, boats and other personal property must be removed from the refuge following each days hunt.

B. Upland Game Hunting. * * *

1. The Sequoyah National Wildlife Refuge is open during seasons, dates, and times as posted by signs and/or indicated on refuge

leaflets, special regulations, permits, and maps.

2. All hunters shall possess and use, while in the field, only nontoxic shot.

3. Neither hunters nor dogs may enter closed areas to retrieve game.

4. Hunting is not allowed within 50 ft. (15.24 meters) of designated roads or parking areas.

5. Only shotguns and bows and arrows (excluding broadhead arrows) are permitted.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits and payment of a fee are required

2. All hunters must attend a hunter orientation briefing prior to each hunt.

D. Sport Fishing. * * *

1. The Sequoyah National Wildlife Refuge is open to fishing as specified on refuge leaflets, special regulations, permits, maps, or as posted on signs.

* * * * *

4. The taking of turtles and mussels is not permitted.

* * * * *

19. Section 32.56 *Oregon* is amended by revising paragraph B.3, of Cold Springs National Wildlife Refuge; by revising paragraph B.3. of McKay Creek National Wildlife Refuge, and by revising paragraph B.3. of Umatilla National Wildlife Refuge to read as follows:

§ 32.56 Oregon.

* * * * *

Cold Springs National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

3. Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

McKay Creek National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

3. Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Umatilla National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

B. Upland Game Hunting. * * *

* * * * *

3. Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

20. Section 32.57 *Pennsylvania* is amended by revising paragraphs A., B. and C., of Ohio River Islands National Wildlife Refuge to read as follows:

§ 32.57 Pennsylvania.

* * * * *

Ohio River Islands National Wildlife Refuge

A. Hunting of Migratory Game Birds. Migratory game bird hunting is permitted on designated areas of the refuge subject to the following conditions:

1. Each hunter must have in his possession a current copy of the Ohio River Islands National Wildlife Refuge Hunting Regulations Leaflet while participating in a refuge hunt.

B. Upland Game Hunting. The hunting of rabbit and squirrel is permitted on designated areas of the refuge subject to the following conditions:

1. The use of dogs for pursuit while rabbit hunting is prohibited.

2. The taking of squirrel and rabbit is restricted to shotgun only.

3. Each hunter must have in his possession a current copy of the Ohio River Islands National Wildlife Refuge Hunting Regulations Leaflet while participating in a refuge hunt.

4. Hunters will possess and use, while in the field, only nontoxic shot.

C. Big Game Hunting. The hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Only archery hunting is permitted.

2. Organized deer drives by two or more hunters are prohibited. A drive is hereby defined as the act of chasing, pursuing, disturbing or otherwise directing deer so as to make the animals more susceptible to harvest.

3. Baiting for deer on refuge lands is prohibited.

4. Each hunter must have in his possession a current copy of the Ohio River Islands National Wildlife Refuge Regulations Leaflet while participating in a refuge hunt.

* * * * *

21. Section 32.64 *Utah* is amended by revising paragraphs A., B. and D. of Bear River Migratory Bird Refuge to read as follows:

§ 32.64 Utah.

* * * * *

Bear River Migratory Bird Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, and tundra swan is permitted on designated areas of the refuge subject to the following conditions:

1. No hunting or shooting is permitted within 100 yards (30.48 meters) of principal refuge roads (the tour route).

2. All firearms must be completely unloaded (including the magazine) and cased or dismantled when hunters are in a vehicle or while on principle refuge roads (the tour route) and parking sites.

3. While in the field, hunters shall possess and use only nontoxic shot.

4. Use of pits or permanent blinds is not permitted.

5. Airboats are permitted only in Unit 9 and in Block C of the Refuge.

6. The Refuge, including parking sites, is closed ninety (90) minutes after sunset (end of shooting hours). Decoys, boats, vehicles and other personal property may not be left on the refuge overnight.

7. Parking is permitted in designated parking sites only.

8. Hunters who take or attempt to take tundra swans must possess a Utah State Swan Permit and may not possess or use more than 10 shells per day while hunting swans.

9. Any person entering, using or occupying the refuge for waterfowl hunting must abide by all the terms and conditions in the Refuge hunting brochure.

B. Upland Game Hunting. Hunting of pheasants is permitted on designated areas of the refuge subject to the following conditions:

1. While in the field, hunters shall possess and use only nontoxic shot.

C. Big Game Hunting. * * *

D. Sport Fishing. Fishing is permitted on designated areas of the Refuge subject to the following conditions:

1. Fishing is permitted year-round in designated areas of the Refuge.

* * * * *

22. Section 32.65 *Vermont* is amended by revising introductory text of paragraph B., and revising paragraph B.2. of Missisquoi National Wildlife Refuge to read as follows:

§ 32.65 Vermont.

* * * * *

Missisquoi National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of rabbits, ruffed grouse and squirrels is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

2. The use of rifles is not permitted on that portion of the refuge lying east of the *Missisquoi* River.

* * * * *

23. Section 32.66 *Virginia* is amended by revising paragraph C., of Chincoteague National Wildlife Refuge to read as follows:

* * * * *

§ 32.66 Virginia.

* * * * *

Chincoteague National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer and sika is permitted in designated areas of the refuge subject to the following conditions:

1. A refuge permit is required.

* * * * *

24. Section 32.67 *Washington* is amended by revising paragraph A., of Ridgefield National Wildlife Refuge; and by revising paragraph B.2., of Toppenish National Wildlife Refuge to read as follows:

§ 32.67 Washington.

* * * * *

Ridgefield National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, and coots is

permitted on designated areas of the refuge subject to the following condition: Hunting is by permit only.

* * * * *

Toppenish National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

25. Section 32.69 *Wisconsin* is amended by revising paragraphs B.1., B.2., C.4. and D., of Necedah National Wildlife Refuge; and adding Upper Mississippi River National Wildlife and Fish Refuge alphabetically to read as follows:

§ 32.69 Wisconsin.

* * * * *

Necedah National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

1. During State waterfowl hunting season, guns must be unloaded or cased in the retrieval zone of Refuge Area 7.

2. During the spring turkey hunting season only, persons having an unexpired State spring turkey permit in possession may enter and hunt wild turkeys in all open refuge areas.

* * * * *

C. Big Game Hunting. * * *

* * * * *

4. Refuge Areas 1,2,4,5,6 and 7 are open to deer hunting.

* * * * *

D. Sport Fishing. Fishing is permitted on designated areas of the refuge at designated times subject to the following conditions.

1. Non-motorized boats are permitted in Sprague-Goose Pools only when these pools are open to fishing. Motorized boats are permitted in Suk Cerney Pool.

* * * * *

Upper Mississippi River National Wildlife and Fish Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of all migratory birds is prohibited on refuge closed areas posted ''Area Closed'', on the Goose Island ''No Hunting'' zone in Pool 8, and on the Upper Halfway Creek Marsh ''No Hunting'' zone in Pool 7.

2. Permits are required for Potters Marsh in Pool 13 except during the early teal season.

B. Upland Game Hunting. Hunting of upland game is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting or possession of firearms are prohibited between March 15 and the opening of the State fall hunting seasons except that hunting of wild turkey is permitted during the State spring turkey season.

2. Hunting is permitted on refuge areas posted ''Area Closed'' beginning the day after the close of the applicable State duck hunting season until season closure or March 15, whichever occurs first, except that hunting of wild turkey is permitted during the State spring wild turkey season.

3. Hunting is prohibited at all times on the Goose Island ''No Hunting'' zone in Pool 8, and Upper Halfway Creek Marsh ''No Hunting'' zone in Pool 7.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is permitted until season closure or March 15, whichever date occurs first.

2. Hunting is permitted on refuge areas posted ''Area Closed'' beginning the day after the close of the applicable State duck hunting season until season closure or March 15, whichever date occurs first.

3. Hunting is prohibited at all times on the Goose Island ''No Hunting'' zone in Pool 8 and Upper Halfway Creek Marsh ''No Hunting'' zone in Pool 7.

4. Construction or use of permanent blinds, platforms or ladders is not permitted.

5. All stands must be removed from the refuge at the end of each day's hunt.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing on the Spring Lake Closed Area, Carroll County, Illinois, is not permitted from October 1 through the last day of the Illinois waterfowl season.

2. Only hand powered boats or boats with electric motors are permitted on Mertes' Slough in Buffalo County, Wisconsin.

26. Section 32.71 *Pacific Islands Territory* is amended by revising paragraphs D.1., D.3., D.4., removing paragraph D.5., and redesignating paragraph D.6 as paragraph D.5. of Johnson Atoll National Wildlife Refuge to read as follows:

§ 32.71 Pacific Islands Territory.

* * * * *

Johnson Atoll National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Lobsters of 31/4 inch carapace length or more may be taken from the lagoon area from September 1 through May 31, but not by spearing, traps, or the use of pry bars or related methods destructive to coral; no female lobsters bearing eggs may be taken at any time.

* * * * *

3. Taking of fish by the use of spear ''guns'' is prohibited. Hand-propelled speaxs or ''Hawaiian Slings'' consisting of a single shaft propelled by a rubber tube are permitted for underwater taking of fish. Above water use of spears is prohibited.

4. The collecting or taking of all forms of live or dead coral is prohibited; the export of coral by any means is prohibited.

* * * * *

Dated: June 3, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–15138 Filed 6–21–96; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 960613174–6174–01; I.D. 050996C]

RIN 0648–AI71

Reef Fish Fishery of the Gulf of Mexico; Amendment 13

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 13 to this Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). Amendment 13 would extend the red snapper vessel permit endorsement and trip limit system until implementation of: The individual transferable quota (ITQ) system approved under Amendment 8 to the FMP, or an alternate program to restrict access to the commercial red snapper fishery, such as a limited license system. If neither option is possible, the trip limit and endorsement provisions would terminate on December 31, 1997. The intent effects of this rule are to stabilize the fishery and to provide for controlled harvest until a more comprehensive controlled access plan can be implemented.

ADDRESSES: Comments on the proposed rule must be sent to Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 13, which includes an environmental assessment and a regulatory impact review (RIR), should be sent to the Gulf of Mexico Fishery Management Council (Council), 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609. Related RIRs for Amendments 6 and 9 may also be obtained from the Council.

DATES: Written comments must be received on or before August 8, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 813–570–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 641 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Background

An ATQ system was proposed by the Council in Amendment 8 to the FMP to address excessive effort capacity in the commercial red snapper fishery in the Gulf of Mexico. Amendment 8 was approved by NMFS, and the final rule to implement it was published November 29, 1995 (60 FR 61200). Starting April 1, 1996, participation in the commercial fishery for red snapper was to be controlled by ITQs based on percentage shares of the commercial quota. However, because of the furlough of NMFS personnel and budget limitations under the continuing resolutions that provide operating funds for Commerce from December 1995 through March 1996, NMFS was unable to issue ITQ shares and coupons and implement the ITQ system on April 1. Accordingly, NMFS implemented an emergency interim rule on February 29, 1996 (61 FR 7751), to suspend implementation of the ITQ system and to continue the red snapper endorsement and trip limit provisions, then in effect under another emergency interim rule (61 FR 17, January 2, 1996), as long as the 1996 commercial fishery was open. The 1996 commercial red snapper season opened on February 1, 1996, the annual commercial quota was reached on April 4, 1996, and the commercial red snapper fishery was closed on April 5, 1996.

Amendment 13

Amendment 13 was developed by the Council because of concerns that implementation of the ITQ system would be further delayed by Congressional action. In fact, section 210 of the Department of Commerce and Related Agencies Appropriations Act for 1996 (Public Law 104–134) prohibits NMFS from using funds appropriated under that act, or any other act, to implement regulations for any ITQ system that was approved by the Secretary of Commerce (Secretary) after January 4, 1995, until offsetting fees to pay for the cost of administering such regulations are expressly authorized under the Magnuson Act. The commercial red snapper ITQ system is affected by section 210, because NMFS, for the Secretary, approved Amendment 8 on October 13, 1995.

The problems in the fishery that led to implementation of the red snapper endorsement system, and approval of the ITQ system under Amendment 8, are expected to continue until a comprehensive program to control access to red snapper can be implemented. Until then, controlled harvest rates (i.e., the trip limit and endorsement system) are needed to stabilize the fishery. The Council, after review of various alternatives, determined that continuation of the red snapper endorsement system and its associated trip limits is appropriate to allow an open fishery until a permanent controlled access system can be implemented. Permit endorsements for red snapper would continue to be transferable only to other vessels owned by the same entity, or in the event of death or disability of the permit holder.

Because of the legislative prohibition on expenditure of funds to implement the red snapper ITQ system, NMFS proposes to suspend indefinitely implementation of the ITQ system concomitant with implementation of Amendment 13. If the commercial red snapper ITQ system cannot be implemented by the end of 1997, the Council intends to review the red snapper management regime before the regulations implementing Amendment 13 expire and to initiate appropriate action for the 1998 season.

Availability of Amendment 13

Additional background and rationale for the measures discussed above are contained in Amendment 13, the availability of which was announced in the Federal Register (61 FR 24267, May 14, 1996).

Classification

Section 304(a)(1)(D) of the Magnuson Act requires NMFS to publish regulations proposed by a Council within 15 days of receipt of an amendment and regulations. At this time NMFS has not determined that Amendment 13 is consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation (AGC) has certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that Amendment 13 and its implementing rule will not have significant impact on a substantial number of small entities. Amendment 13 would continue in effect the vessel permit endorsement and trip limit provisions that were first approved and implemented under emergency action(57 FR 66237, December 30, 1992), and continued under Amendment 6 (58 FR 33025, June 15, 1993), Amendment 9 (59 FR 39301, August 2, 1994), and emergency action (61 FR 7751, February 29, 1996) through May 29, 1996. Act certified that the rules implementing Amendments 6 and 9 would not have a significant economic impact on a substantial number of small entities. For details about those certifications, refer to the Federal Register publications cited above.

Amendment 13 would continue the permit endorsement provisions of the status quo management regime which were certified twice previously under 5 U.S.C. § 605(b) by Commerce to the Chief Counsel for Advocacy, SBA, as not having a significant economic effect on a substantial number of small entities. For these reasons, an initial regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 18, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 641 is proposed to be amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 641.4 [Amended]

2. On § 641.4, paragraph (o) is suspended indefinitely.

3. In § 641.7, paragraph (ff) through (kk) are suspended and paragraphs (nn), through (pp) are added to read as follows:

§ 641.7 Prohibitions.

* * * * *

(nn) Exceed the vessel trip or landing limits for red snapper, as specified in § 641.31 (a) and (b).

(oo) Transfer a red snapper at sea, as specified in § 641.31 (c).

(pp) Purchase, barter, trade, or sell, or attemp to purchase, barter, trade, or sell, a red snapper possessed or landed in excess of a trip or landing limit, as specified in § 641.31 (d).

§ 641.10 [Amended]

4. Section 641.10 is suspended indefinitely.

5. Sections 641.31 through 641.33 are added to read as follows:

§ 641.31 Red snapper trip limits.

The provisions of this section are effective through December 31, 1997.

(a) Except as provided in paragraph (b) of this section, a vessel that has on board a valid commercial reef fish permit may not possess on any trip or land in any day red snapper in excess of 200 lb (91 kg), whole or eviscerated.

(b) a vessel that on board a valid commercial reef fish permit and a valid red snapper endorsement may not possess on any trip or land in any day red snapper in excess of 2,000 lb (907 kg), whole or eviscerated.

(c) A red snapper may not be transferred at sea from one vessel to another.

(d) No person may purchase, barter, trade, or sell, or attempt to purchase, barter, trade, or sell, a red snapper possessed or landed in excess of the trip or landing limits specified in paragraphs (a) and (b) of this section.

§ 641.32 Red snapper endorsement.

The provisions of this section are effective through December 31, 1997.

(a) As a prerequisite for exemption from the trip limit for red snapper specified in § 641.31(a), a vessel for which a commercial reef fish permit has been issued under § 641.4 must have a red snapper endorsement on such permit, and such permit and endorsement must be on board the vessel.

(b) A red snapper endorsement is invalid upon sale of the vessel; however, an owner of a vessel with a commercial reef fish permit may transfer the red snapper endorsement to another vessel with a commercial reef fish permit owned by the same entity by returning the existing endorsement with an application for an endorsement for the replacement vessel.

(c) The provisions of paragraph (b) of this section notwithstanding—

(1) In the event that a vessel with a red snapper endorsement has a change of ownership that is directly related to the disability or death of the owner, the Regional Director may issue a red snapper endorsement, temporarily or permanently, with the commercial reef fish permit that is issued for the vessel under the new owner. Such new owner will be the person specified by the owner or his/her legal guardian, in the case of a disabled owner, or by the will or executor/administrator of the estate, in the case of a deceased owner. (Change of ownership of a vessel with a commercial reef fish permit upon disability or death of an owner is considered a purchase of a permitted vessel and § 641.4 (m)(3) applies regarding a commercial reef fish permit for the vessel under the new owner.)

(2) In the event of the disability or death of an operator whose presence aboard a vessel is a condition for the validity of a red snapper endorsement, the Regional Director may revise and reissue an endorsement, temporarily or permanently, to the permitted vessel. Such revised endorsement will contain the name of a substitute operator specified by the operator or his/her legal guardian, in the case of a disabled operator, or by the will or executor/administrator of the estate, in the case of a deceased operator. As was the case with the replaced endorsement, the presence of the substitute operator aboard and in charge of the vessel is a condition for the validity of the revised endorsement. Such revised endorsement will be reissued only with the concurrence of the vessel owner.

§ 641.33 Condition of a permit.

The provisions of this section are effective through December 31, 1997. As a condition of a commercial reef fish permit issued under § 641.4, without regard to where red snapper are harvested or possessed, a vessel with such permit—

(a) May not exceed the appropriate vessel trip or landing limit for red snapper, as specified in § 641.31 (a) and (b).

(b) May not transfer a red snapper at sea, as specified in § 641.31(c).

[FR Doc. 96–15936 Filed 6–18–96; 4:46 pm]
BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 61, No. 122
Monday, June 24, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 96–008–2]

Secretary's Advisory Committee on Foreign Animal and Poultry Diseases; Notice of Renewal

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of renewal.

SUMMARY: We are giving notice that the Secretary of Agriculture has renewed the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases for a 2-year period. The Secretary has determined that the Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Dr. John Williams, Chief Staff Veterinarian, Emergency Programs, VS, APHIS, Suite 3B08, 4700 River Road Unit 41, Riverdale, MD 20737–1236, (301) 734–8073.

SUPPLEMENTARY INFORMATION: The purpose of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (Committee) is to advise the Secretary of Agriculture regarding program operations and measures to suppress, control, or eradicate an outbreak of foot-and-mouth disease, or other destructive foreign animal or poultry diseases, in the event these diseases should enter the United States. The Committee also advises the Secretary of Agriculture of means to prevent these diseases.

Done in Washington, DC, this 12th day of June 1996.

Wardell Townsend, Jr.,

Assistant Secretary for Administration.

[FR Doc. 96–16031 Filed 6–21–96; 8:45 am]

BILLING CODE 3410–34–P

[Docket No. 96–007–2]

National Animal Damage Control Advisory Committee; Notice of Renewal

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of renewal.

SUMMARY: We are giving notice that the Secretary of Agriculture has renewed the National Animal Damage Control Advisory Committee for a 2-year period. The Secretary has determined that the Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Clay, Director, Operational Support Staff, ADC, APHIS, 4700 River Road Unit 87, Riverdale, MD 20737–1234, (301) 734–7921 or e-mail: A347ADCOSS@ATTMAIL.COM.

SUPPLEMENTARY INFORMATION: The purpose of the National Animal Damage Control Advisory Committee (Committee) is to advise the Secretary of Agriculture on policies, program issues, and research needed to conduct the Animal Damage Control (ADC) program. The Committee also serves as a public forum enabling those affected by the ADC program to have a voice in the program's policies.

Done in Washington, DC, this 12th day of June 1996.

Wardell Townsend, Jr.,

Assistant Secretary for Administration.

[FR Doc. 96–16032 Filed 6–21–96; 8:45 am]

BILLING CODE 3410–34–P

Farm Service Agency

1996–1997 Marketing Year Penalty Rates for All Kinds of Tobacco Subject to Quotas

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of determination.

SUMMARY: This notice sets forth the determination of the 1996–1997 marketing year penalty rate for excess tobacco for all kinds of tobacco subject to marketing quotas. In accordance with section 314 of the Agricultural Adjustment Act of 1938, as amended (the 1938 Act), the marketing quota penalty for a kind of tobacco is assessed at the rate of 75 percent of the average market price for that kind of tobacco for the immediately preceding marketing year.

EFFECTIVE DATE: June 24, 1996.

FOR FURTHER INFORMATION CONTACT: Joe Lewis, Jr., Tobacco and Peanuts Division, Farm Service Agency (FSA), United States Department of Agriculture, AG Box 0514, P.O. Box 2415, Washington, DC 20013–2415, telephone (202) 720–0795.

SUPPLEMENTARY INFORMATION:

Executive Order 12886

This action has been determined to be not significant for purposes of Executive Order 12886 and therefore has not been reviewed by the Office of Management and Budget.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the FSA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

Executive Order 12372

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

Executive Order 12778 is not applicable to this notice.

Discussion

Section 314 of the 1938 Act, provides that the rate of penalty per pound for a kind of tobacco that is subject to marketing quotas shall be 75 percent of the average market price for such tobacco for the immediately preceding marketing year.

For all kinds of tobacco subject to marketing quotas, except Puerto Rico (type 46) tobacco, the Agricultural Statistics Board, National Agricultural

Statistical Service, United States Department of Agriculture announced in a May 10, 1996, Crop Production Report the relevant average prices for each type of tobacco. The penalty rates are determined on the basis of this information.

The national marketing quota for Puerto Rico (type 46) tobacco has been zero since 1989. Therefore, the penalty rate for Puerto Rico (type 46) tobacco for the 1996–1997 marketing year shall be the same as the penalty rate determined for the 1989–1990 marketing year, the last year that marketing information was available.

Since the determination of the 1996–1997 marketing year rates of penalty reflect only mathematical computations which are required to be made in accordance with a statutory formula, it has been determined that no further public rulemaking is required.

Determination

Accordingly, it is determined the 1996–1997 marketing year rates of penalty for kinds of tobacco subject to marketing quotas are as follows:

RATE OF PENALTY

[1996–1997 Marketing Year]

Kinds of tobacco	Cents per pound
Flue-Cured	134
Burley	139
Fire-Cured (Type 21)	122
Fired-Cured (Types 22 and 23)	163
Dark Air-Cured (Types 35 and 36)	132
Virginia Sun-Cured (Type 37)	115
Cigar Filler and Binder (Types 42, 43, 44, 54, and 55)	109
Puerto Rico Cigar-Filler (Type 46)	57

Signed at Washington, DC, on June 17, 1996.

Bruce R. Weber,

Administrator, Farm Service Agency.

[FR Doc. 96–16035 Filed 6–21–96; 8:45 am]

BILLING CODE 3410–05–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, D.C. on Tuesday, and Wednesday, July 9–10, 1996 at the times and location noted below.

DATES: The schedule of events is as follows:

Tuesday, July 9, 1996

9:00 a.m.–11:00 a.m.—Ad Hoc Committee on Bylaws and Statutory Review

11:00 a.m.–Noon—Planning and Budget Committee

Wednesday, July 10, 1996

9:00 a.m.–10:00 a.m.—Technical Programs Committee

10:00 a.m.–Noon—Executive Committee

1:30 p.m.–3:30 p.m.—Board Meeting

ADDRESSES: The meetings will be held at: Marriott at Metro Center, 775 12th Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434 ext. 14 (voice) and (202) 272–5449 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items:

- Approval of the Minutes of the May 15 Board Meeting
- ADAAG Review Advisory Committee Report
- Fiscal Year 1998 Program Goals

All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 96–16044 Filed 6–21–96; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–008]

Color Television Receivers From the Republic of Korea: Initiation of Changed Circumstances Antidumping Duty Administrative Review and Consideration of Revocation of Order (in Part)

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of changed circumstances antidumping duty administrative review and consideration of revocation of order (in Part).

SUMMARY: In response to a request made on July 20, 1995, by Samsung Electronics Co., Ltd. (Samsung), the Department of Commerce (the Department) is initiating a changed circumstances antidumping duty administrative review to consider Samsung's request to revoke the antidumping duty order on color television receivers (CTVs) from Korea (49 FR 18336, April 30, 1984) as it relates to Samsung.

EFFECTIVE DATE: June 24, 1996.

FOR FURTHER INFORMATION CONTACT: David Genovese or Joseph Hanley, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4697/3058.

SUPPLEMENTARY INFORMATION:

Background

On July 20, 1995, Samsung requested that the Department conduct a changed circumstances review and revoke the order as to Samsung after completion of the review. Zenith Electronics Corporation, a domestic interested party, and petitioners filed objections to Samsung's request on August 4, 1995, and August 11, 1995, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Scope of Review

Imports covered by the antidumping duty order include CTVs, complete and incomplete, from the Republic of Korea. This merchandise is currently classifiable under item numbers 8528.10.80, 8529.90.15, 8529.90.20, and 8540.11.00 of the Harmonized Tariff Schedule (HTS). Since the order covers all CTVs regardless of HTS classification, the HTS subheadings are provided for convenience and for U.S. Customs Service purposes. Our written description of the scope of the order remains dispositive.

Initiation of Changed Circumstances Antidumping Duty Administrative Review

Pursuant to section 751(d) of the Act, the Department may partially revoke an antidumping duty order based on a review under section 751(b) of the Act (i.e., a changed circumstances review). Section 751(b)(1) of the Act requires the Department to conduct a changed circumstances administrative review upon receipt of a request containing information concerning changed circumstances sufficient to warrant a review.

The Department's regulations at 19 C.F.R. 353.25(d) permit the Department to conduct a changed circumstances administrative review under 19 C.F.R. 353.22(f) provided that the Department concludes from the available information, including information in a request for a changed circumstances review, that changed circumstances sufficient to warrant a review exists.

In its July 20, 1995 request for a changed circumstances review and partial revocation of the antidumping duty order, Samsung noted: 1) the decision of the Court of Appeals for the Federal Circuit in *Daewoo Electronics Co., Ltd., et al.* v. *United States,* 6 F.3d 1511 (Fed. Cir. 1993), *cert. denied,* 114 S. Ct. 2672 (1994), which Samsung claims made it possible for the first time for it to contemplate the possibility of *de minimis* margins for three or more consecutive review periods; 2) that as a direct result of that decision, Samsung has now established that it has not been dumping CTVs in the United States for six consecutive years; and 3) that it has not shipped CTVs to the U.S. since 1991.

We have determined that the unique circumstances presented by Samsung in this proceeding constitute changed circumstances sufficient to warrant a review under section 751(b) of the Act and 19 CFR 353.22(f) of the Department's regulations. Specifically, the statute, the Department's regulations and our international obligations anticipate that a methodology exist whereby parties that have demonstrated a history of not selling at less than normal value and have established that it is not likely that they will, in the future, sell at less than normal value may obtain a partial revocation of the order. Normally, the methodology established by section 353.25 (a) and (b) is adequate to accomplish that purpose; however, the combination of the timing of certain court decisions, the timing of certain results of administrative review in this proceeding, and the coincidence of these events with the company's decision to stop shipping from Korea may have prevented the regulation from operating as intended with respect to Samsung. Therefore, in accordance with section 751(b) of the Act and 19 CFR 353.22(f) of the Department's regulations, we are initiating this changed circumstances administrative review in order to determine whether a partial revocation of the order would be appropriate as to Samsung.

On January 19, 1996, we initiated an anti-circumvention inquiry to determine whether Samsung is circumventing the antidumping duty order by completing or assembling CTVs in Mexico and Thailand for exportation to the United States. We will be conducting this changed circumstances review concurrently with the anti-circumvention inquiry, and we will consider the relevance of our findings in the anti-circumvention inquiry to this changed circumstances review.

This notice is in accordance with section 751(b)(1) of the Act and sections 353.22(f) and 353.25(d) of the Department's regulations.

Dated: June 11, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–15920 Filed 6–21–96; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination of whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as ''Export Trade Certificate of Review, application number 96–00004.'' A summary of the application follows.

Summary of the Application

Applicant: The Foreign Market Search for U.S. Products and Services, Inc., doing business as FMS Exports-Imports, Inc., P.O. Box 4063, South Bend, IN 46634.

Contact: Mr. David Smith, Owner/Marketing Director.

Telephone: (219) 234–6920.

Application No.: 96–00004.

Date Deemed Submitted: June 12, 1996.

Members (in addition to applicant): None.

FMS Exports-Imports, Inc. (''FMS'') seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. *Products*
   All products.
2. *Services*
   All services.
3. *Technology Rights*

Technology rights, including, but not limited to, patents, trademarks, copyrights and trade secrets that relate to Products and Services.

4. *Export Trade Facilitation Services (as they relate to the Export of Products, Services and Technology Rights)*

Export Trade Facilitation Services include professional services in the areas of government relations and assistance with state and federal programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing;

negotiations; joint ventures; shipping; export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation; and facilitating the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

To engage in Export Trade in the Export Markets as an Export Intermediary, FMS may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;
2. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;
3. Enter into exclusive and/or non-exclusive licensing and/or sale agreements with Suppliers for the export of Products, Services and/or Technology Rights in Export Markets;
4. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;
5. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services and/or Technology Rights;
6. Allocate export orders among Suppliers;
7. Establish the price of Products, Services and/or Technology Rights for sale and/or licensing in Export Markets;
8. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights;
9. Enter into contracts for shipping; and
10. Exchange information on a one-on-one basis with individual Suppliers regarding inventories and near-term production schedules for the purpose of determining the availability of Products for export and coordinating exports with distributors.

Definitions

1. ''Export Intermediary'' means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. ''Supplier'' means a person who produces, provides, or sells a Product and/or Service.

3. ''Technology Rights'' means such things as, but not limited to, patents, trademarks, copyrights, and trade secrets that relate to Products and Services.

Dated: June 18, 1996.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 96–15959 Filed 6–21–96; 8:45 am]

BILLING CODE 3510–D–R–F–P

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of information collection.

SUMMARY: The Commodity Futures Trading Commission has submitted information collection 3038–0015, Copies of Crop and Market Information Reports, to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. The information collected pursuant to this rule is in the public interest and is necessary for market surveillance.

ADDRESSES: Persons wishing to comment on this information collection should contact Jeff Hill, Office of Management and Budget, Room 3228, NEOB, Washington, D.C. 20502, (202) 395–7340. Copies of the submission are available from Joe F. Mink, Agency Clearance Officer, (202) 418–5170.

Title: Copies of Crop and Market Information Report.

Control Number: 3038–0015.

Action: Extension.

Respondents: Futures Commission Merchants and Members of contract markets.

Estimated Annual Burden: 5 total hours.

Regulation (17 CFR)	Estimated number of respondents	Annual responses	Est. avg. hours per response
1.40	30	30	0.167

Issued in Washington, D.C., on June 18th, 1996.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 96–15996 Filed 6–21–96; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board Meeting

The AFMC Test Center Advisory Group (TCAG) & AFDTC Subcommittee, Scientific Advisory Board Summer Study will take place on 23 July 1996, at Eglin AFB, FL from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is for the members to gather data in support of the Test Center Advisory Group.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–15937 Filed 6–21–96; 8:45 am]

BILLING CODE 3910–01–W

DEPARTMENT OF EDUCATION

Notice of Proosed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 23, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 18, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: Integrated Postsecondary Education Data System (IPEDS) 1996 through 1997/1998.
Frequency: Annually.
Affected Public: Business or other for-profit; Not-for-profit institutions; State, local or Tribal Government, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 10,114.
Burden Hours: 92,680.
Abstract: The IPEDS provides information on postsecondary education—it's providers, enrollments, completions, and finances in addition to other information. The recent publication of final regulations for Student Right-to-Know and changes in financial accounting standards for nonprofit institutions have made it necessary for NCES to modify the IPEDS data collection for 1996 and 1997 to help institutions adapt to these changes.

Office of the Under Secretary

Type of Review: New.
Title: Survey of State Correctional Education.
Frequency: One-time.
Affected Public: State, local or Tribal Government, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 51.
Burden Hours: 1,020.
Abstract: This survey is part of the Evaluation of State Correctional Education that the Department of Education is conducting to be able to provide federal and state policymakers with information about which approaches to correctional education are associated with the most positive outcomes.

Office of Postsecondary Education

Type of Review:
Title: GEPA 424 Biennial Report on the Distribution of Federal Education Funds.
Frequency: Biennially.
Affected Public: Federal Government; State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 142.
Burden Hours: 3,420.
Abstract: Section 424 of the General Education Provisions Act (GEPA) requires States to report on the distribution of funds for State-administered Federal education funds. This reporting requirement, previously known as GEPA 406A, underwent significant revisions during the 1994 reauthorization of the Elementary and Secondary Education Act, including changing the collection from annual to biennial, extending the reporting deadlines, and expanding the report to include Federally-administered programs.

[FR Doc. 96–15958 Filed 6–21–96; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–185–002]

Algonquin Gas Transmission Company; Notice of Compliance Filing

June 18, 1996.

Take notice that on June 14, 1996, Algonquin Gas Transmission Company (Algonquin) tendered for filing its true-up compliance filing in accordance with Ordering Paragraphs (B) and (C) of the Commission's April 26, 1996 order issued in the captioned docket.

Algonguin states that the April 26 order accepted the tariff sheets contained in Algonquin's limited Section 4 filing effective May 1, 1996, and directed that Algonquin file its true-up compliance filing by June 15. Algonquin states that Appendix A, to the filing, contains pro forma tariff sheets, reflecting corrected rates as directed by the Commission in its April 26 order.

Algonquin requests that the Commission approve the true-up, based on per books data, of the rates previously filed with and accepted by the Commission in Docket No. RP96–185–000, and accept the pro forma sheets contained in Appendix A to the filing. Algonquin states that the revised rates reflect an annual decrease in cost of service of $68,984.

Algonquin states that copies of the filing have been mailed upon each person on the official service list compiled by the Secretary in Docket No. RP96–185 and to all customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–15965 Filed 6–21–96; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP95–145–004]

Northwest Pipeline Corporation; Notice of Compliance Filing

June 18, 1996.

Take notice that on June 13, 1996, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet, to become effective June 26, 1995:

2nd Substitute Fourth Revised Sheet No. 231

Northwest states that the purpose of this filing is to comply with the directives of the Commission's letter order in Docket No. RP95–145–003 relating to the sale of excess gas in limited or infrequent situations. Northwest has restored to Section 14.12 of the General Terms and Conditions of its tariff certain language that was filed on May 26, 1995 in this docket.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–15964 Filed 6–21–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–224–001]

Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

June 18, 1996

Take notice that on June 14, 1996, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, proposed to be effective June 1, 1996:

Sub Original Sheet No. 35A
Sub Original Sheet No. 42B
Sub Original Sheet No. 100A

Panhandle states that the purpose of this filing is to comply with Ordering Paragraph (C) of the Commission's May 30, 1996 Order in Docket No. RP96–224–000 to limit the applicability of the CRP mechanism to the primary market.

Panhandle states that a copy of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–15968 Filed 6–21–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–218–001]

Texas Eastern Transmission Corporation; Notice of Compliance Filing

June 18, 1996.

Take notice that on June 13, 1996, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective May 29, 1996:

Substitute Original Sheet No. 204A
Substitute Original Sheet No. 214A
Substitute Original Sheet No. 229A
Substitute Original Sheet No. 252A

Texas Eastern asserts that the purpose of this filing is to comply with the Commission's order issued May 29, 1996 in Docket No. RP96–218–000 (''May 29 Order'').

Texas Eastern states that in compliance with Ordering Paragraph (C) of the May 29 Order this filing removes from the tariff language that extends the applicability of the CRP mechanism to capacity release transactions prior to the end of the suspension period established by the May 29 Order. Texas Eastern also states that in compliance with the May 29 Order this filing provides an illustrative refund computation, responds to MDG's concern regarding the indemnification language and indicates how Texas Eastern will account for CRP program revenues.

Texas Eastern states that copies of the filing were served on the firm customers of Texas Eastern and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–15967 Filed 6–21–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP96–211–001 and RP95–197–012]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

June 18, 1996.

Take notice on June 13, 1996, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets which tariff sheets are listed below. The proposed effective date is June 1, 1996.

Sub 3rd Revised First Revised Sheet No. 339
Sub 4th Revised First Revised Sheet No. 339

Transco states that the purpose of the instant filing is to comply with the Commission's Order issued May 29, 1996 in Docket Nos. RP96–211–000, RP95–197–010, and RP95–197–011. The May 29 Order, inter alia, accepted certain tariff sheets to be effective June 1, 1996 and directed Transco to file, within 15 days of such order, revisions to Section 28.4 of the General Terms and Conditions of its Volume No. 1 Tariff to (i) eliminate the statement that Section 28.4 only deals with interruptible services and (ii) include the priority and method of curtailment to be used For Transco's firm services that are not considered secondary as defined in Section 2 of Transco's firm transportation rate schedules. In compliance with such directive Transco has eliminated the reference to ''interruptible'' in Section 28.4 and included a new Section 28.4(d) to its General Terms and Conditions.

Transco states that it is serving copies of the instant filing to customers, State

Commissions and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–15966 Filed 6–21–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11472–000–ME]

Consolidated Hydro Maine, Inc.; Notice of Availability of Draft Environmental Assessment

June 18, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for an original license for the existing unlicensed Burnham Hydroelectric Project, located in Waldo and Somerset Counties, Maine, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street NE., Washington, D.C. 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1–A, Washington, DC 20426. Please affix ''Burnham Hydroelectric Project No. 11472'' to all comments. For further information, please contact Tom Dean at (202) 219–2778.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–15963 Filed 6–21–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2009–009]

Virginia Electric Power Company; Notice of Availability of Draft Environmental Assessment

June 18, 1996.

A draft environmental assessment (DEA) is available for public review. The DEA is for an application to amend the Gaston and Roanoke Rapids Hydroelectric Project. The application is to provide for the installation of a water supply intake and associated facilities at Lake Gaston for the City of South Hill. The DEA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The Gaston and Roanoke Rapids Hydroelectric Project is located on the Roanoke River in Mecklenburg and Brunswick Counties, Virginia and Warren, Northampton, and Halifax Counties, North Carolina.

The DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, N.E., Washington, D.C. 20426. Copies can also be obtained by calling the project manager listed below.

Please submit any comments within 40 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please affix Project No. 2009–009 to all comments. For further information, please contact the project manager, John A. Schnagl, at (202) 219–2661.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–15962 Filed 6–21–96; 8:45 am]

BILLING CODE 6717–01–M

Environmental Management Site-Specific Advisory Board, Hanford Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford Site.

DATES: Thursday, July 11, 1996: 9:00 a.m.—5:15 p.m. Friday, July 12, 1996: 8:30 a.m.—4:00 p.m.

ADDRESSES: Red Lion Lloyd Center, 1000 N.E. Multnomah, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Jon Yerxa, Public Participation Coordinator, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA, 99352.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

July Meeting Topics

The Hanford Advisory Board will receive information on and discuss issues related to: the risk data sheet process, effluent treatment facility, Tri-Party Agreement milestone 33, the vadose zone (groundwater cesium leaks and barrier wall on N Springs), the community relations plan, and budget process recommendations. The Board will also receive updates from various subcommittees, including updates on: the Tank Waste Remediation System (TWRS) Environmental Impact Statement meetings and TWRS characterization, the Management & Integration contract, tanks and/or privatization, spent fuel, the Columbia River Impact Statement, and a report on the Environmental Management Science Program.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jon Yerxa's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and

copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday- Friday, except Federal holidays. Minutes will also be available by writing to Jon Yerxa, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling him at (509)–376–9628.

Issued at Washington, DC on June 18, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–16016 Filed 6–21–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission Sunshine Act Meetings

June 19, 1996.

The following notice of meeting is published pursuant to Section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.
DATE AND TIME: JUNE 26, 1996, 10:00 A.M.
PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426
STATUS: Open.
MATTERS TO BE CONSIDERED: Agenda.

* Note—Items Listed on the Agenda May Be Deleted Without Further Notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400.

For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro 655th Meeting—June 26, 1996, Regular Meeting (10:00 a.m.)

CAH–1.
Docket # P–2114, 046, Public Utility District No. 2 of Grant County, Washington
CAH–2.
Docket # P–2456, 015, Public Service Company of New Hampshire
CAH–3.
Docket # P–553, 024, City of Seattle, Washington
Other #s EL78–36, EL78–36, P–553, 024, City of Seattle, Washington, 001, U.S. Department of the Interior, 002, U.S. Department of the Interior, 025, City of Seattle, Washington
CAH–4.
Omitted
CAH–5.
Omitted
CAH–6.
Docket # P–2645, 029, Niagara Mohawk Power Corporation

Consent Agenda—Electric

CAE–1.
Docket # ER96–1228, 000, Entergy Services, Inc.
CAE–2.
Docket # ER96–1462, 000, Public Service Company of New Mexico
CAE–3.
Docket # ER96–1484, 000, Nantahala Power and Light Company
CAE–4.
Docket # ER96–1687, 000, Niagara Mohawk Power Corporation
CAE–5.
Omitted
CAE–6.
Docket # ER96–1748, 000, Pacific Northwest Generating Cooperative, an Oregon Cooperative
CAE–7.
Omitted
CAE–8.
Docket # EC96–2, 000, Public Service Company of Colorado and Southwestern Public Service Company
CAE–9.
Docket # ER95–791, 000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company
CAE–10.
Docket# EC95–16, 005, Wisconsin Electric Power Company and Northern States Power Company (Minnesota), et al.
Other#S ER95–1357, 005, Wisconsin Electric Power Company and Northern States Power Company (Minnesota), et al.
ER95–1358, 005, Wisconsin Energy Company and Northern States Power Company
CAE–11.
Docket# ER96–43, 001, San Diego Gas & Electric Company
CAE–12.
Docket# ER96–85, 000, Florida Power Corporation
Other#s ER96–89, 000, Florida Power Corporation
CAE–13.
Docket# FA89–28, 005, System Energy Resources, Inc.
CAE–14. Docket# ER95–1640, 001, Delmarva Power and Light Company
CAE–15.
Omitted
CAE–16.
Docket# ER96–1208, 001, Interstate Power Company
CAE–17.
Docket# ER96–780, 002, Southern Company Services, Inc.
CAE–18.
Docket# ER95–1383, 001, Virginia Electric and Power Company
CAE–19.
Docket# EC95–16, 001, Wisconsin Electric Power Company and Northern States Power Company (Minnesota), et al.
Other#S ER95–1357, 001, Wisconsin Electric Power Company and Northern States Power Company (Minnesota), et al.
ER95–1358, 001, Wisconsin Energy Company and Northern States Power Company
CAE–20.
Docket# ER96–224, 001, Niagara Mohawk Power Corporation
CAE–21.
Docket# EL95–58, 000, Entergy Services, Inc.
CAE–22.
Docket# EG96–60, 000, O'Brien (Parlin) Cogeneration, Inc.

Consent Agenda—Gas and Oil

CAG–1.
Docket# GT96–65, 000, Algonquin LNG, Inc.
CAG–2.
Docket# RP96–248, 000, East Tennessee Natural Gas Company
CAG–3.
Docket# RP96–250, 000, Equitrans, Inc.
CAG–4.
Docket# RP96–258, 000, Southern Natural Gas Company
CAG–5.
Docket# RP96–261, 000, Columbia Gulf Transmission Company
CAG–6.
Docket# RP96–262, 000, ANR Pipeline Company
CAG–7.
Docket# RP96–263, 000, ANR Pipeline Company
CAG–8.
Docket# RP96–268, 000, Tennessee Gas Pipeline Company
Other#s RP96–269, 000, Tennessee Gas Pipeline Company
CAG–9.
Docket# TM96–5–18, 000, Texas Gas Transmission Corporation
CAG–10.
Docket# RP96–237, 000, Northern Border Pipeline Company
Other#s RP96–237, 001, Northern Border Pipeline Company
CAG–11.
Docket# RP96–240, 000, Northwest Alaskan Pipeline Company
CAG–12.
Docket# RP96–247, 000, Midwestern Gas Transmission Company
CAG–13. Omitted
CAG–14.
Docket# RP96–252, 000, Northern Natural Gas Company
CAG–15. Omitted
CAG–16.
Docket# RP96–255, 000, Williston Basin Interstate Pipeline Company
CAG–17.
Docket# RP96–256, 000, Williston Basin Interstate Pipeline Company
Other#s TM94–5–49, 004, Williston Basin Interstate Pipeline Company
TM95–4–49, 005, Williston Basin Interstate Pipeline Company
CAG–18.
Docket# RP96–259, 000, Panhandle Eastern Pipeline Company
CAG–19.
Docket# RP96–260, 000, Panhandle Eastern Pipeline Company
CAG–20.

Omitted
CAG–21.
Docket# PR95–15, 000, Manchester Pipeline Corporation
CAG–22.
Docket# GT95–11, 000, Willaims Natural Gas Company
Other#s GT95–11, 001, Williams Natural Gas Company
CAG–23.
Docket# RP91–166, 031, Northwest Pipeline Corporation
Other#s RP91–166, 032, Northwest Pipeline Corporation
CAG–24.
Omitted
CAG–25.
Docket# RP95–326, 009, Natural Gas Pipeline Company of America
Other#s RP95–242. 009, Natural Gas Pipeline Company of America
CAG–26.
Docket# RP96–200, 002, Noram Gas Transmission Company
Other#s RP96–200, 003, Noram Gas TRansmission Company
CAG–27.
Omitted.
CAG–28.
Docket# RP94–120, 013, Koch Gateway Pipeline Company
CAG–29.
Docket# RP96–199, 001, Mississippi River Transmission Corporation
CAG–30.
Docket# RP96–184, 002, Natural Gas Pipeline Company of America
CAG–31.
Docket# RP95–396, 012, Tennessee Gas Pipeline Company
CAG–32.
Docket# RP96–136, 003, Algonquin Gas Transmission Company
CAG–33.
Docket# AC94–179, 001, Algonquin Gas Transmission Company
Other#S AC93–61, 001, Tennessee Gas Pipeline Company, Midwestern Gas Transmission Company and East Tennessee Natural Gas Co. et al.
AC93–186, 001, CNG Transmission Corporation
AC94–40, 001, Mississippi River Transmission Corporation
AC94–48, 001, Panhandle Eastern Pipe Line Company
AC94–49, 001, Trunkline Gas Company
CAG–34.
Omitted
CAG–35.
Docket# RP95–407, 006, Questar Pipeline Company
Other#S RP95–407, 007, Questar Pipeline Company
CAG–36.
Omitted
CAG–37.
Omitted
CAG–38.
Docket# MG96–11, 000, Granite State Gas Transmission, Inc.
CAG–39.
Docket# MG95–4, 001, Northwest Pipeline Corporation
CAG–40.
Docket# MG96–8, 001, Michigan Gas Storage Company
CAG–41.
Docket# CP95–168, 001, Sea Robin Pipeline Company
CAG–42.
Docket# RP92–112, 003, Northwest Pipeline Corporation
Other#S CP91–780, 007, Northwest Pipeline Corporation
CAG–43.
Docket# CP94–267, 002, Noram Gas Transmission Company
Other#S CP94–267, 003, Noram Gas Transmission Company
CAG–44.
Docket# CP96–497, 000, Valero Transmission Company and West Texas Gas, Inc.
CAG–45.
Docket# CP94–751, 004, Transwestern Pipeline Company
CAG–46.
Docket# CP96–57, 000, Northern Natural Gas Company
CAG–47.
Docket# CP96–99, 000, Natural Gas Pipeline Company of America
CAG–48.
Docket# CP96–156, 000, Williston Basin Interstate Pipeline Company
CAG–49.
Docket# CP96–41, 000, Colorado Interstate Gas Company
Other #s CP96–41, 001, Colorado Interstate Gas Company
CP96–41, 002, Colorado Interstate Gas Company
CP96–41, 003, Colorado Interstate Gas Company
CAG–50.
Docket # CP96–114, 000, Southern Natural Gas Company
CAG–51.
Docket # CP96–528, 000, Universal Resources Corporation
CAG–52.
Docket # CP90–1372, 000, Altamont Gas Transmission Company
Other #s CP90–1372, 001, Altamont Gas Transmission Company
CP90–1373, 000, Altamont Gas Transmission Company
CP90–1373, 001, Altamont Gas Transmission Company
CP90–1374, 000, Altamont Gas Transmission Company
CP90–1374, 001, Altamont Gas Transmission Company
CP90–1375, 000, Altamont Gas Transmission Company
CP90–1375, 001, Altamont Gas Transmission Company
CAG–53.
Docket # CP96–35, 000, Steuben Gas Storage Company
CAG–54.
Docket # CP96–281, 000, West Texas Gas, Inc.
Other #s CP96–215, 000, Northern Natural Gas Company

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Docket # RP92–137, 016, Transcontinental Gas Pipe Line Corporation
Other #s RP93–136, 000, Transcontinental Gas Pipe Line Corporation

Opinion and Order on Initial Decision

PR–2.
Docket # RP91–203, 000, Tennessee Gas Pipeline Company, et al.

Opinion and Order on Initial Decision

II. Pipeline Certificate Matters

PC–1.
Reserved

Lois D. Cashell,

Secretary.

[FR Doc. 96–16220 Filed 6–20–96; 3:54 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5526–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program; OMB Control Number: 2060–0060

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3507 (a)(1)(D)), this notice announces that the Information Collection Request (ICR) listed below has been forwarded to the Office of Management and Budget (OMB) for review and approval: Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program, OMB Number 2060–0060, expiration date 07/31/96. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 24, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 116.05 and OMB No. 2060–0060.

SUPPLEMENTARY INFORMATION: *Title:* Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program;

OMB No. 2060–0060; (EPA ICR No. 116.05) expiring 07/31/96. This is a request for extension of a currently approved collection.

Abstract: The information required is the minimal necessary to ensure that the part to be certified actually performs as required. Without this information EPA would have no way to control and audit fraudulent or marginal submissions. If no information was collected at the time of testing, there would be no means of showing later that the part was properly designed, since information is only collected when the part is tested to be certified. EPA would not be able to control the self- certification of parts and this could, therefore, result in certified parts that cause vehicles to fail emissions standards.

The information collected is part of the requirement of Section 207(a) of the Clean Air Act, and as described in 40 CFR Part 85, Subpart V. This is a voluntary certification program and there is no requirement that any manufacturer participate.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 03/4/96 (61 FR 8272); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 8 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondent/Affected Entities: Parties potentially affected by this action are automotive manufacturers and builders of automotive aftermarket parts.

Estimated Number of Respondents: 2.

Estimated Total Annual Hour Burden: 1722 hours.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following address. Please refer to EPA ICR No. 116.05 and OMB Control No. 2060–0060 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW., Washington, DC 20460
and
Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503

Dated: June 18, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–16014 Filed 6–21–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5525–7]

Kansas; Final Full Program Determination of Adequacy of State/Tribal Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of immediate final program determination of adequacy on Kansas' application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that Municipal Solid Waste Landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate ''permit'' programs for MSWLFs, but does not mandate issuance of a rule governing such determinations. The EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which the EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus the approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by 40 CFR part 258 to the extent the State/Tribal permit program allows such flexibility. The EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal criteria under 40 CFR part 258 will apply to all permitted and unpermitted MSWLF facilities.

Kansas applied for a determination of adequacy under section 4005 of RCRA. The EPA reviewed Kansas' application and has made a decision, subject to public review and comment, that Kansas' municipal solid waste landfill permit program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is approving Kansas' MSWLF permit program.

EFFECTIVE DATE: The determination of adequacy for Kansas shall be effective on August 23, 1996, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Kansas' program revision application must be received by the close of business July 24, 1996.

ADDRESSES: Copies of Kansas' application for a determination of adequacy are available for inspection and copying from 8 a.m. to 4:30 p.m., Monday through Friday at the following addresses: Kansas Department of Health and Environment, Forbes Field, Building 740, Topeka, Kansas 66620–0001, Attn: Mr. Kent Foerster, telephone 913–296–1600; and U.S. EPA Region VII Library, 726 Minnesota Avenue, Kansas City, Kansas 66101, Phone: 913–551–7241.

FOR FURTHER INFORMATION CONTACT: Ms. Althea M. Moses, 726 Minnesota Ave., Kansas City, Kansas 66101; (913) 551–7055.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, the EPA promulgated 40 CFR part 258 for MSWLFs. Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA),

requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under 40 CFR part 258. Subtitle D also requires in section 4005 of RCRA that the EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the 40 CFR part 258. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

The EPA intends to propose in the STIR to allow partial approval if: (1) The Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring compliance with 40 CFR part 258; (2) changes to a limited narrow part(s) of the State/Tribal permit program are needed to meet these requirements; and (3) provisions not included in the partially approved portions of the State/Tribal permit program are a clearly identifiable and separable subset of 40 CFR part 258. As a State's/Tribe's regulations and statutes are amended to comply with 40 CFR part 258, unapproved portions of a partially approved MSWLF permit program may be approved by the EPA. The State/Tribe may submit an amended application to EPA for review and an adequacy determination will be made using the same criteria as for the initial application. This adequacy determination will be published in the Federal Register summarizing the Agency's decision and the portion(s) of the State/Tribal MSWLF permit program affected and providing an opportunity to comment for a period of 30 days. The adequacy determination will become effective sixty (60) days following publication if no adverse comments are received. If EPA receives adverse comments on its adequacy determination, another Federal Register notice will be published either affirming or reversing the initial decision while responding to the public comments.

The EPA will review State/Tribal requirements to determine whether they are ''adequate'' under section 4005(c)(1)(C) of RCRA. The EPA interprets the requirements for States or Tribes to develop ''adequate'' programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to 40 CFR part 258. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, the EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

The EPA Regions will determine whether a State/Tribe has submitted an ''adequate'' program based on the interpretation outlined above. The EPA plans to provide more specific criteria for this evaluation when it proposes the STIR. The EPA expects State/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. State of Kansas

On November 8, 1994, the Kansas Department of Health and Environment submitted an amended application for full MSWLF permit program approval. This application follows an August 19, 1993 submittal on which EPA approved all portions of Kansas' program with the exception that EPA reserved for Federal enforcement of the following facilities: (1) New units accepting less than 100 tons per day (tpd) of solid waste; (2) existing units or new units which are listed on the National Priorities List (NPL); (3) existing units which have accepted less than 100 tpd of solid waste prior to October 9, 1993 and accept greater than 100 tpd during the period from October 9, 1993 to April 4, 1994. It was established that all such units, in accordance with the Federal requirements at 40 CFR part 258.1(f), are subject to a compliance date of October 9, 1993 and are not eligible for a compliance date extension to April 9, 1994. Kansas has since revoked K.A.R. 28–29–99. Further background on the final partial program determination of adequacy is located at 58 FR 52302 (October 7, 1993).

Kansas does not claim jurisdiction over Indian Land. Kansas' program is not enforceable on Indian lands.

The EPA has reviewed Kansas' application, and has made an immediate final decision that Kansas' municipal solid waste landfill permit program satisfies all the requirements of the State/Tribal Implementation Rule to qualify for full program approval. Consequently, EPA intends to grant full approval of the Kansas program. The public may submit written comments on EPA's immediate final decision up until July 24, 1996. Copies of Kansas' application for program approval are available for inspection and copying at the locations identifies in the **ADDRESSES** section of this action.

Approval of Kansas' municipal solid waste landfill permitting program shall become effective August 23, 1996, unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either: (1) A withdrawal of the immediate final decision, or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

C. Decision

I conclude that Kansas' application for full program adequacy determination meets all of the statutory and regulatory requirements established by RCRA for full program adequacy. Accordingly, Kansas is granted a full program determination of adequacy for all parts of its municipal solid waste landfill permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As the EPA explained in the preamble to the final MSWLF criteria, the EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by the EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this final approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6946.

Dated: June 11, 1996.

Dennis Grams,

Regional Administrator.

[FR Doc. 96–16010 Filed 6–21–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5525–9]

Nebraska; Final Full Program Determination of Adequacy of State/Tribal Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of immediate final program determination of adequacy on Nebraska's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that Municipal Solid Waste Landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate ''permit'' programs for MSWLFs, but does not mandate issuance of a rule governing such determinations. The EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which the EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus the approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by 40 CFR part 258 to the extent the State/Tribal permit program allows such flexibility. The EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal criteria under 40 CFR part 258 will apply to all permitted and unpermitted MSWLF facilities.

Nebraska applied for a determination of adequacy under section 4005 of RCRA. The EPA reviewed Nebraska's application and has made a decision, subject to public review and comment, that Nebraska's municipal solid waste landfill permit program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is approving Nebraska's MSWLF permit program.

EFFECTIVE DATE: The determination of adequacy for Nebraska shall be effective on August 23, 1996, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Missouri's program revision application must be received by the close of business July 24, 1996, unless.

ADDRESSES: Copies of Nebraska's application for MSWLF permit program approval are available for inspection and copying from 8 a.m. to 4:30 p.m., Monday through Friday at the following addresses: Office of Public Affairs, Atrium Building, Suite 400, 1200 N Street, Lincoln, Nebraska 68509 Attn: Mr. Joseph Francis, telephone 402–471–4210; and U.S. EPA Region VII Library, 726 Minnesota Avenue, Kansas City, Kansas 66101, Phone: 913–551–7241.

FOR FURTHER INFORMATION CONTACT: Ms. Altheà M. Moses, 726 Minnesota Ave., Kansas City, Kansas 66101; (913) 551–7055.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, the EPA promulgated 40 CFR part 258 for MSWLFs. Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under 40 CFR part 258. Subtitle D also requires in section 4005 of RCRA that the EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the 40 CFR part 258. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

The EPA intends to propose in the STIR to allow partial approval if: (1) The Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring compliance with 40 CFR part 258; (2) changes to a limited narrow part(s) of the State/Tribal permit program are needed to meet these requirements; and (3) provisions not included in the partially approved portions of the State/Tribal permit program are a clearly identifiable and separable subset of 40 CFR part 258. As a State's/Tribe's regulations and statutes are amended to comply with 40 CFR part 258, unapproved portions of a partially approved MSWLF permit program may be approved by the EPA. The State/Tribe may submit an amended application to EPA for review and an adequacy determination will be made using the same criteria as for the initial application. This adequacy determination will be published in the Federal Register summarizing the Agency's decision and the portion(s) of the State/Tribal MSWLF permit program affected and providing an opportunity to comment for a period of 30 days. The adequacy determination will become effective sixty (60) days following publication if no adverse comments are received. If EPA receives adverse comments on its adequacy determination, another Federal Register notice will be published either affirming or reversing the initial decision while responding to the public comments.

The EPA will review State/Tribal requirements to determine whether they are ''adequate'' under section 4005(c)(1)(C) of RCRA. The EPA interprets the requirements for States or Tribes to develop ''adequate'' programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to 40 CFR part 258. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, the EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

The EPA Regions will determine whether a State/Tribe has submitted an ''adequate'' program based on the interpretation outlined above. The EPA plans to provide more specific criteria for this evaluation when it proposes the STIR. The EPA expects State/Tribes to meet all of these requirements for all elements of a MSWLF program before it

gives full approval to a MSWLF program.

B. State of Nebraska

On August 29, 1995 the Nebraska Department of Environmental Quality submitted an amended application for full MSWLF landfill permit program approval. This application follows an August 19, 1993 submittal on which EPA approved all portions of Nebraska's program for all parts except the exemption from ground-water monitoring at small facilities. The partial program approval determination was due to an exemption from ground water monitoring at small facilities which appeared in Nebraska Department of Environmental Quality, Title 132—*Rules and Regulations Pertaining to Solid Waste Management,* Chapter 10, Section 001. This exemption was vacated from 40 CFR Part 258 as a result of *Sierra Club* v. *U.S. Environmental Protection Agency,* 992 F.2d 337 (D.C. Cir. 1993). In accordance with this decision, 40 CFR Part 258.1 (f)(1) was revised in 40 CFR Part 258.1(f), 58 FR 51536 (October 1, 1993). Further background on the final partial program determination of adequacy is located at 58 FR 65985 (December 17, 1993)

Nebraska does not claim jurisdiction over Indian land. Nebraska's program is not enforceable on Indian lands.

The EPA has reviewed Nebraska's application, and has made an immediate final decision that Nebraska's municipal solid waste landfill permit program satisfies all the requirements of the State/Tribal Implementation Rule to qualify for full program approval. Consequently, EPA intends to grant full approval of the Nebraska program. The public may submit written comments on EPA's immediate final decision up until July 24, 1996. Copies of Nebraska's application for program approval are available for inspection and copying at the locations identified in the **ADDRESSES** section of this action .

Approval of Nebraska's municipal solid waste landfill permitting program shall become effective August 23, 1996, unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either: (1) A withdrawal of the immediate final decision, or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

C. Decision

I conclude that Nebraska's application for full program adequacy determination meets all of the statutory and regulatory requirements established by RCRA for full program adequacy. Accordingly, Nebraska is granted a full program determination of adequacy for all parts of its municipal solid waste landfill permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As the EPA explained in the preamble to the final MSWLF criteria, the EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by the EPA should be considered to be in compliance with the Federal criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this final approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended, 42 U.S.C. § 6946.

Dated: June 11, 1996.

Dennis Grams,

Regional Administrator.

[FR Doc. 96–16013 Filed 6–21–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5523–5]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity to Comment Regarding Union Electric Company, St. Louis, MO

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding Union Electric Company, St. Louis, Missouri.

SUMMARY: EPA is providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(A).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of public notice.

On June 24, 1995, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following Complaint: In the Matter of Union Electric Company, St. Louis, Missouri, EPCRA Docket No. VII–95E–158 and CWA Docket No. VII–95–W–001.

The Complaint proposes a penalty of Ten Thousand Dollars ($10,000) for the discharge of Mercury into the Mississippi River, on September 28, 1994, without a permit issued under Section 402 of the Clean Water Act, in violation of Section 301 of the Clean Water Act.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by Union Electric Company is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public

comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this notice.

Dated: June 5, 1996.

Delores J. Platit,

Acting Regional Administrator.

[FR Doc. 96–16011 Filed 6–21–96; 8:45 am]

BILLING CODE 6560–50–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 25, 1996, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance.

The matters to be considered at the meeting are:

Open Session

A. *Approval of Minutes.*

B. *New Business—Regulations.*

1. Capital (Phase II) [12 CFR Part 615] (Final).

2. Eligibility and Scope of Financing [12 CFR Part 613] (Final).

Dated: June 19, 1996.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 96–16057 Filed 6–19–96; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Amendment to Statement of Policy Regarding Independent External Auditing Programs of State Nonmember Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC or Corporation).

ACTION: Statement of policy.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under Section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the FDIC is amending its policy statement regarding independent external auditing programs of state nonmember banks (Policy Statement). These amendments remove an inconsistency between the Policy Statement and another policy that was later approved by the FDIC Board of Directors and eliminate a reference to another FDIC policy which has been superseded. The amendments also add a paragraph referencing a statutory requirement enacted since the Policy Statement's adoption and renumber the subsequent paragraphs of the Policy Statement.

EFFECTIVE DATE: June 24, 1996.

FOR FURTHER INFORMATION CONTACT: Doris L. Marsh, Examination Specialist, Division of Supervision, (202) 898–8905, or Sandra Comenetz, Counsel, Legal Division, (202) 898–3582, FDIC, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the CDRI (12 U.S.C. 4803(a)) requires each federal banking agency to streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires each federal agency to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies.

As part of this review, the FDIC has determined that the Policy Statement needs several amendments to eliminate inconsistencies and outmoded requirements.

The Policy Statement was adopted by the FDIC Board of Directors on November 16, 1988, and published on November 28, 1988, 53 FR 47871. The Policy Statement states that the FDIC strongly encourages each state nonmember bank to adopt an external auditing program that includes an annual audit of its financial statements by an independent public accountant. However, the Federal Deposit Insurance Corporation Improvement Act of 1991 added Section 36 to the Federal Deposit Insurance Act. Section 36, and its implementing regulation at 12 CFR Part 363, requires all insured depository institutions with $500 million or more in total assets at the beginning of their fiscal year to have an annual audit performed by an independent public accountant and to have an audit committee entirely consisting of outside directors who are independent of management. A new paragraph 3 has been added to the Policy Statement describing these and certain related requirements for larger institutions and the existing paragraphs 3 through 15 have been redesignated paragraphs 4 through 16.

In addition, the Policy Statement advises applicants for deposit insurance that they will generally be expected to commit their bank to obtain an audit of its financial statements by an independent public accountant annually for at least the first *three* years after deposit insurance is granted [emphasis added]. Original footnote 2 to the Policy Statement refers to a June 24, 1987, FDIC policy statement on deposit insurance applications by operating non-FDIC insured institutions.

However, newly insured institutions generally present greater risks to the deposit insurance funds than operating insured institutions which have been subject to ongoing supervision by the applicable federal and state regulators. In addition, a statement of policy on Applications for Deposit Insurance was adopted by the FDIC Board of Directors on April 7, 1992, 57 FR 12822, which superseded the referenced 1987 policy statement. The 1992 policy statement states the FDIC's belief that an annual audit by an independent public accountant should be an integral part of the safe and sound management of a depository institution. As a result, applicants for deposit insurance coverage are expected to commit their depository institution to obtain an audit by an independent public accountant annually for at least the first *five* years after deposit insurance coverage is granted [emphasis added]. Thus, this Policy Statement must be amended to be consistent with the more recent statement of policy on Applications for Deposit Insurance. A reference to the 1992 applications policy replaces a reference to the rescinded policy statement in footnote 2.

Discussion of Amendments

A new paragraph 3 is added to the Policy Statement to explain the audit and audit committee requirements for all insured depository institutions with $500 million or more in total assets as a result of the addition of Section 36 to the Federal Deposit Insurance Act in 1991. Thus, the original paragraphs 3 through 15 have been redesignated paragraphs 4 through 16. In renumbered paragraph 11 of the Policy Statement, the word ''three'' is replaced with the word ''five'' because newly insured

institutions generally present greater risks to the insurance funds, a factor recognized in the FDIC's 1992 applications policy statement. This change in the Policy Statement will bring it into conformity with the recommended number of years an applicant for deposit insurance must commit to obtaining an annual audit as set forth in the applications policy statement. The reference in footnote 2 to the FDIC's rescinded 1987 policy statement is replaced with a reference to the FDIC's current applications policy statement.

For the reasons set forth in the preamble, the Board of Directors of the FDIC hereby amends its Statement of Policy Regarding Independent External Auditing Programs of State Nonmember Banks to read as follows:

Statement of Policy Regarding Independent External Auditing Programs of State Nonmember Banks

1. In view of its interest in the financial soundness of banks and the banking system, the FDIC believes that a strong internal auditing function combined with a well-planned *external auditing program* [1] substantially lessens the risk that a bank will not detect potentially serious problems. An external auditing program is a set of procedures designed to test and evaluate high *risk areas* of a bank's business which are performed by an *independent* auditor who may or may not be a *public accountant.* The failure to detect and correct potentially serious problems increases the risk a bank poses to the FDIC's insurance funds. A strong internal auditing function establishes the proper control environment and promotes accuracy and efficiency in a bank's operations. An external auditing program complements this function by providing an objective outside view of the bank's operations.

2. Regardless of the strength of a bank's internal auditing procedures, the FDIC believes that an external auditing program should be considered by a bank's board of directors as part of the cost of operating a bank in a safe and sound manner. An external auditing program assists the bank's board of directors in safeguarding assets and identifying risks inherent in its operation. In addition, an external auditing program may tend to assist directors in the event of litigation on whether an institution's board has exercised reasonable care in protecting the assets of the bank. Thus, the FDIC urges all state nonmember banks to establish and maintain a sound external auditing program.

3. In accordance with Section 36 of the Federal Deposit Insurance Act, as implemented by 12 CFR Part 363, each insured depository institution with $500 million or more in total assets at the beginning of its fiscal year is required to file with the FDIC and the appropriate federal banking agency, an annual report, including its financial statements which have been audited by an independent public accountant, and a management report and independent public accountant's attestation concerning both the effectiveness of the institution's internal controls for financial reporting and its compliance with designated safety and soundness laws. In addition, each such institution is required to have an audit committee consisting entirely of outside directors who are independent of management. For state nonmember banks subject to Section 36 and Part 363, these audit and audit committee requirements take precedence over the provisions of this Statement of Policy.

State Nonmember Banks Not Subject to Part 363

4. The FDIC strongly encourages the board of directors of each state nonmember bank to establish an *audit committee* consisting, if possible, entirely of *outside directors.* The audit committee or board of directors of each state nonmember bank generally should analyze the extent of the external auditing coverage needed by the bank annually. They should determine whether the bank's needs will best be met by an *audit* of its *financial statements* or by an acceptable alternative (described in paragraphs 9 and 10 below). When selecting the scope of the planned external auditing program for the year, the committee or board should ensure that the program will provide sufficient substantive external coverage of the bank's risk areas and any other areas of potential concern, such as compliance with applicable laws and regulations. If not, additional external auditing procedures conducted by an independent auditor may be appropriate for a specific year or several years to cover particularly high risk areas of the bank. The decisions resulting from these deliberations should be recorded in the committee's or board's minutes.

5. If the audit committee or board of directors of a bank, after due consideration, determines not to engage an independent public accountant to conduct an annual audit of the bank's financial statements (or whose parent holding company's consolidated financial statements are not audited), the reasons for the committee's or board's conclusion to use one of the acceptable alternatives or to have no external auditing program should be documented in its minutes. In the evaluation, the committee or board generally should consider not only the cost of an annual audit of the bank's financial statements, but also the potential benefits.

6. A review of both a bank's internal and external auditing programs has been and will continue to be a part of the FDIC's examination procedures. FDIC examiners will review the nature of each bank's external auditing program in conjunction with the risk areas perceived in that particular bank's business and operations, and they will exercise their judgment and discretion in evaluating the adequacy of a bank's external auditing program. Examiners will not automatically comment negatively to the board of directors of a bank with an otherwise satisfactory external auditing program merely because it does not engage an independent public accountant to perform an audit of its financial statements.

Audit by an Independent Public Accountant

7. The FDIC strongly encourages each state nonmember bank to adopt an external auditing program that includes an annual audit of its financial statements by an independent public accountant. A bank that does so would generally be considered to have a satisfactory external auditing program. An external audit of a bank's financial statements benefits management by assisting in the establishment of the accounting and operating policies, internal controls, internal auditing programs, and management information systems necessary to ensure the fair presentation of these statements. An audit also assists boards of directors in fulfilling their fiduciary responsibilities and provides them greater assurance that financial reports are accurate and provide adequate disclosure.

8. An audit of a bank's financial statements performed by the independent public accountant as of a quarter-end date when the Reports of Condition and Income are prepared is preferable and would permit the bank to use the audited financial statements in the preparation and/or subsequent review of those reports. A bank may also find it more cost effective to be audited during accounting firms' less busy periods. The independent public accountant chosen should be experienced in auditing banks and

[1] Terms defined in Appendix A are italicized the first time they appear in this statement of policy.

knowledgeable about banking regulations in order to provide the bank with the most effective service.

Alternatives to an Audit by a Public Accountant

9. The FDIC recognizes that a bank's audit committee or board of directors may determine that the external auditing program that will best meet its individual needs for that particular year will be other than an audit of its financial statements by an independent public accountant. The committee or board, after a full review of alternative and/or supplemental approaches for an adequate independent external auditing program, may decide on a well-planned directors' examination, an independent analysis of internal controls or other areas, a report on the balance sheet, or specified auditing procedures by an independent auditor. If the bank has an outside auditing firm that is simply obtaining confirmations of deposits and loans, for example, the committee or board should normally expand the scope of the auditing work performed to include additional procedures to test the bank's high risk areas.

10. Nonaccounting firms with bank auditing experience and expertise that are independent of the bank are available in some geographic locations. They may provide acceptable directors' examinations, analyses, or specified auditing work at a reasonable cost. In some instances, these firms' services include nonauditing work which enables them to provide suggestions on compliance issues and operational efficiencies. Depending upon the expertise of the firm and the scope of the engagement, these nonaccounting firms may be an appropriate choice for an external auditing program.

Newly Insured Banks

11. The FDIC believes that an adequate external auditing program performed by an independent auditor should be an integral part of the safe and sound management of a bank. Thus, applicants for deposit insurance coverage will generally be expected to commit their bank to obtain an audit of its financial statements by an independent public accountant annually for at least the first five years after deposit insurance coverage is granted.[2] The FDIC may determine on a case-by-case basis that an independent audit of financial statements is unnecessary where an applicant can demonstrate that the benefits derived from such an external audit will be substantially provided by other outside sources, or where the applicant is owned by another company and will undergo an audit performed by an independent public accounting firm as part of an audit of the consolidated financial statements of its parent company.

Notification and Submission of Reports

12. Whether currently or newly insured, the FDIC requests each state nonmember bank that undergoes any external auditing work, regardless of the scope of the work, to furnish a copy of any reports by the public accountant or other external auditor, including any management letters, to the appropriate FDIC regional office as soon as possible after their receipt by the bank.

13. In addition, the FDIC requests each bank to promptly notify the appropriate FDIC regional office when any public accountant or other external auditor is initially engaged to perform external auditing procedures and when a change in its accountant or auditor occurs.

Holding Company Subsidiaries

14. When the audit committee or board of directors of any state nonmember bank owned by another company (such as a bank holding company) considers its external auditing program, it may find it appropriate to express the scope of its program in terms of the bank's relationship to the consolidated group. No section of this statement of policy is intended to imply that any state nonmember bank owned by another company is expected to obtain a separate audit of the financial statements of the individual bank. Where the state nonmember bank is directly or indirectly included in the audit of the consolidated financial statements of its parent company performed by an independent public accounting firm, the state nonmember bank may send one copy of the comparable reports by the public accountant or notification of the change in accountants for the consolidated company to the appropriate regional director. If several banks supervised by the same FDIC regional office are owned by one parent company, a single copy of each report applicable to the consolidated company may be submitted to the regional office on behalf of all of the affiliated banks.

Troubled Banks

15. An annual independent external auditing program complements both the FDIC's supervisory process and bank internal auditing programs by further identifying or clarifying issues of potential concern or exposure. It can also greatly aid management in taking corrective action, particularly when weaknesses are detected in internal control or management information systems. For these reasons, an annual audit of bank financial statements performed by an independent public accounting firm or, if more appropriate, specified auditing procedures will be a condition of future enforcement actions, when deemed necessary, or if it appears that any of the following conditions may exist:

(a) Internal controls and internal auditing procedures are inadequate;
(b) The directorate is generally uninformed in the area of internal controls;
(c) There is evidence of insider abuse;
(d) There are known or suspected defalcations;
(e) There is known or suspected criminal activity;
(f) It is probable that director liability for losses exists;
(g) Direct verification is warranted; and/or
(h) Questionable transactions with affiliates have occurred.

16. Such an enforcement action may also require that (a) The bank provide to the appropriate FDIC regional office a copy of the auditor's report and any management letter received from the auditor promptly after the completion of any auditing work and that (b) the bank notify the regional office in advance of the time and date of any meeting between management and the auditor at which any auditing findings are to be presented so that a representative of the FDIC may be present if the FDIC so chooses.

Appendix A—Definitions

Audit. An examination of the financial statements, accounting records, and other supporting evidence of a bank performed by an independent certified or licensed public accountant in accordance with generally accepted auditing standards and of sufficient scope to enable the auditor to express an opinion on the bank's financial statements as to their presentation in accordance with generally accepted accounting principles (GAAP).

Audit Committee. A committee of the board of directors, consisting, if possible, entirely of outside directors. To the extent possible, members of the committee should be knowledgeable about accounting and auditing. They should be responsible for reviewing and approving the bank's internal and external auditing programs or

[2] Refer to the April 7, 1992, Statement of Policy on Applications for Deposit Insurance.

recommending adoption of these programs to the full board. Both the internal auditor and the external auditor should have unrestricted access to the audit committee without the need for any prior management knowledge or approval. Other duties of the audit committee should include reviewing the independence of the external auditor annually, being consulted by management when it seeks a second opinion on an accounting issue, overseeing the quarterly regulatory reporting process, and reporting its findings periodically to the full board of directors.

Directors' Examination. A review by an independent third party that has been authorized by the bank's board of directors and is performed in accordance with the board's analysis of potential risk areas. Certain procedures may also be required as a result of state law. A directors' examination consisting solely of such procedures as cash counts and confirmations of loans and deposits would not normally be considered a well-planned directors' examination. (Sometimes directors' examinations are similar to so-called ''engagement audits'' or ''operational audits.'' Nevertheless, no widely accepted national standards exist for the specific procedures that must be performed in directors' examinations or these ''audits.'')

External Auditing Program. The performance of procedures to test and evaluate high risk areas of a bank's business by an independent auditor, who may or may not be a public accountant, sufficient for the auditor to be able to express an opinion on the financial statements or to report on the results of the procedures performed.

Financial Statements. The statements of financial position, income, cash flows, and changes in shareholders equity together with related notes.

Independent. No certified public accountant, public accountant, or other auditor will be recognized as independent who is not in fact independent. (Reference is made to § 335.604 of the FDIC rules and regulations for the complete definition of the term ''independent.'')

Outside Directors. Members of a bank's board of directors who are not officers, employees, or principal stockholders of the bank, its subsidiaries, or its affiliates, and do not have any material business dealings with the bank, its subsidiaries, or its affiliates.

Public Accountant. A certified public accountant or licensed public accountant who is duly registered and in good standing as such under the laws of the place of his/her residence or principal office, who is licensed by the accounting regulatory authority of his/her state, and who possesses a permit to practice public accountancy.

Report on the Balance Sheet. An examination of the balance sheet, accounting records, and other supporting evidence performed by an independent certified or licensed public accountant in accordance with generally accepted auditing standards.

Risk Areas. The risk areas are those particular activities of a specific bank that expose the bank to potential losses if problems were to exist and go undetected. The highest risk areas in banks generally include, but are not necessarily limited to, the valuation of collectibility of loans (including the reasonableness of the allowance for loan losses), investments, and repossessed and foreclosed collateral; internal controls; and insider transactions.

By order of the Board of Directors.

Dated at Washington, D.C. this 17th day of June, 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 96–16047 Filed 6–21–96; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 8, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Shari K. Jones, Rainsville, Alabama; to retain a total of 38.79 percent, and James T. Jones, Jr., Rainsville, Alabama, to retain a total of .34 percent, of the voting shares of First State Bancshares of DeKalb County, Inc., Fort Payne, Alabama, and thereby indirectly acquire First State Bank of DeKalb County, Fort Payne, Alabama.

Board of Governors of the Federal Reserve System, June 18, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–15976 Filed 6–21–96; 8:45 am]

BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking

activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 18, 1996.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Investors Bancorp, MHC, and Investors Bancorp, Inc., both of Milburn, New Jersey; to become bank holding companies by acquiring 100 percent of the voting shares of Investors Savings Bank, Milburn, New Jersey.

B. Federal Reserve Bank of Cleveland. (R. Chris Moore, Senior Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Citizens Bancshares, Inc., Salineville, Ohio; to acquire 100 percent of the voting shares of The Navarre Deposit Bank Company, Navarre, Ohio.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Fairmount St. Investments, L.P., Alton, Illinois; to become a bank holding company by acquiring 81.4 percent of the voting shares of Regional Bancshares, Inc., Alton, Illinois, and thereby indirectly acquire Bank of Alton, Alton, Illinois.

2. First Nokomis Bancorp, Inc., Nokomis, Illinois; to acquire 100 percent of the voting shares of Ayars State Bank, Moweaqua, Illinois.

3. Lawton Partners Holding Company, Central City, Kentucky; to acquire 44.16 percent of the voting shares of First United, Inc., Central City, Kentucky, and thereby indirectly acquire First National Bank of Central City, Central City, Kentucky.

Board of Governors of the Federal Reserve System, June 18, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–15975 Filed 6–21–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 8, 1996.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Societe Generale, Paris, France; to engage *de novo* in community activities, by making investments designed to promote community welfare through its New York branch, pursuant to § 225.25(B)(6) of the Board's Regulation Y.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Centura Banks, Inc., Rocky Mount, North Carolina; to acquire 49 percent of First Greensboro Home Equity, Inc., Greensboro, North Carolina, and thereby engage in originating mortgage loans in nonconforming markets, servicing and selling mortgages, and engaging in related activities, pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. UnionBancorp, Inc., Streator, Illinois; to acquire LaSalle County Collections, Inc., Ottawa, Illinois, and thereby engage in operating a collection agency, pursuant to § 225.25(b)(23) of the Board's Regulation Y.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Sterling Bancshares, Inc., Houston, Texas, and Sterling Bancorporation, Inc., Wilmington, Delaware, to acquire CMCR Holding Company, Wilmington, Delaware, and thereby indirectly acquire Charter Mortgage Company, Houston, Texas, and thereby engage in originating single family residential mortgage loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y. The geographic scope for these activities is Texas and Arizona.

Board of Governors of the Federal Reserve System, June 18, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–15977 Filed 6–21–96; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Public Meeting of the Inter-tribal Council on Hanford Health Projects (ICHHP), in association with the meeting of the Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy Sites: Hanford Health Effects Subcommittee Meeting: Date Change.

Federal Register Citation of Previous Announcement:

61 FR 17303—dated April 19, 1996.

SUMMARY: Notice is given that one of the meeting dates for the Public Meeting of the Inter-tribal Council on Hanford Health Projects (ICHHP), in association with the meeting of the Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy Sites: Hanford Health Effects Subcommittee of the Agency for Toxic Substances and Disease Registry (ATSDR), has changed. The meeting place, time, status, purpose, and matters to be discussed, announced in the original notice remain unchanged.

Original Date: September 18, 1996.
New Date: September 11, 1996.

Contact Person for More Information: Linda A. Carnes, Health Council

Advisor, ATSDR, M/S E–28, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–0730, FAX 404/639–0759.

Dated: June 18, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–15974 Filed 6–21–96; 8:45 am]

BILLING CODE 4163–70–M

Administration for Children and Families, Office of Child Support Enforcement

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DDHS), Administration for Children and Families (ACF) as follows: Chapter KF, The Office of Child Support Enforcement (OCSE) (60 FR 39961), as last amended, August 4, 1995. This restructure will establish a new division within the OCSC.

1. Amend KF.10 Organization. Delete in its entirety, and replace it with the following:

KF.10 Organization. The Office of Child Support Enforcement is headed by a Director and consists of:

Office of the Director (KFA)
Division of Audit (KFB)
Division of Program Operations (KFC)
Division of Policy and Planning (KFD)
Division of Consumer Services (KFE)
Division of State and Local Assistance (KFF)

2. Amend KF.20 Functions.

a. Delete first paragraph of paragraph A, and replace it with the following:

KF.20 Functions. A. Office of the Director. The Director is also the Assistant Secretary for Children and Families and is directly responsible to the Secretary for carrying out OCSE's mission. The Deputy Director has day-to-day operational responsibility for Child Support Enforcement programs. The Associate Deputy Director for Information Systems, who is also the Director of the ACF Office of Regional Operations and State Systems, has responsibility for day-to-day management of child support information systems. The Deputy Director assists the Director in carrying out responsibilities of the Office and oversees day-to-day operation of OCSE's Audit, Program Operations, Policy and Planning, Consumer Services and State and Local Assistance Divisions. The Associate Deputy Director assists the Deputy Director in carrying out the responsibilities of the Office.

b. Delete paragraph C in its entirety, and replace it with the following:

C. Division of Program Operations monitors implementation of program requirements and coordinates child support enforcement activities with regional offices. The Division provides specialized services and operation of the Federal Parent Locator Service, the Federal Tax Refund Offset Program, Project 1099, the IRS Full Collection Project and the Parental Kidnapping Service. It monitors contracts with organizations affiliated with child support enforcement programs. The Division provides outreach and liaison services to a variety of special interest populations concerning establishment of paternity and collection of child support.

c. Add paragraph F. Add the following to establish paragraph F:

F. Division of State and Local Assistance in concert with OCSE regional offices, assesses State performance and provides information and assistance on Child Support Enforcement state operations. It provides national direction and leadership for training and technical assistance activities to increase Child Support Enforcement (CSE) program effectiveness both at Federal and State levels; develops guides and resource materials and serves as a clearinghouse for specialized program techniques for use by ACF regional offices and States; and ensures transfer of best practices among State and local CSE enforcement agencies. The Division develops and publishes informational materials and operates a national CSE training center; provides logistical support for both training events and meetings; and monitors contracts with organizations affiliated with child support enforcement programs in the areas of training and technical assistance.

Dated: June 17, 1996.

Mary Jo Bane,

Assistant Secretary for Children and Families.

[FR Doc. 96–15919 Filed 6–21–96; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 94F–0047]

Atlantis Corp., Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 4A4409) proposing that the food additive regulations be amended to provide for the safe use of shark liver oil as a dietary supplement for humans.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3103.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of March 24, 1994 (59 FR 13970), FDA announced that a food additive petition (FAP 4A4409) had been filed by Atlantis Corp., 15 Tommy's Lane, East Freetown, MA 02717. The petition proposed to amend the food additive regulations to provide for the safe use of shark liver oil as a dietary supplement for humans. Atlantis Corp. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: June 10, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–15992 Filed 6–21–96; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline

will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Transmissible Spongiform Encephalopathies Advisory Committee Meeting (formerly Ad Hoc Advisory Committee on Creutzfeldt-Jakob Disease)

Date, time, and place. July 2, 1996, 1 p.m., Woodmont I Bldg., conference room 200S, 1401 Rockville Pike, Rockville, MD.

Type of meeting and contact person. This meeting will be held by a telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the meeting. Open public hearing 1 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 5 p.m.; Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3514, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Transmissible Spongiform Encephalopathies Advisory Committee, code 12388. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates available scientific data concerning the safety of products which may be at risk for transmission of spongiform encephalopathies having an impact on the public health.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 24, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will review and discuss revised precautionary measures to reduce the possible risk of transmission of Creutzfeldt-Jakob Disease by blood and blood products. FDA regrets that it was unable to publish this notice 15 days prior to the July 2, 1996, Transmissible Spongiform Encephalopathies Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Transmissible Spongiform Encephalopathies Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

National Mammography Quality Assurance Advisory Committee

Date, time, and place. July 10, 11, and 12, 1996, 9 a.m., DoubleTree Hotel—Rockville, Main Ballroom, 1750 Rockville Pike, Rockville, MD. A limited number of overnight accommodations have been reserved at the DoubleTree Hotel—Rockville. Attendees requiring overnight accommodations may contact the hotel at 301–468–1100 and reference the FDA committee meeting block, group code 0301. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, July 10, 1996, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion, July 11, 1996, 9 a.m. to 5 p.m.; open subcommittee discussions, July 12, 1996, 9 a.m. to 1 p.m.; open committee discussion, 1 p.m. to 5 p.m.; Charles K. Showalter, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), National Mammography Quality Assurance Advisory Committee, code 12397. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee advises on developing appropriate quality standards and regulations for the use of mammography facilities.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 5, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On July 10, 1996, the committee will hear updates on approvals for alternative standards under the Mammography Quality Standards Act (MQSA) of 1992. On July 10 and 11, 1996, the committee will discuss digital mammography under the MQSA. On July 12, 1996, the committee will discuss the issue of States as certifying bodies under the MQSA as well as the ongoing work of the three subcommittees: Access to Mammography Services, Physicists Availability, and Cost Benefit of Compliance.

Open subcommittee discussions. On July 12, 1996, the three subcommittees will meet concurrently. The subcommittees will discuss information which is necessary to make the determinations and subsequently prepare the reports as mandated in the MQSA. Upon completion, the subcommittee reports will be reviewed by the committee prior to submission to the Secretary and Congress.

Medical Imaging Drugs Advisory Committee

Date, time, and place. July 22, 1996, 8:30 a.m., Holiday Inn—Bethesda, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, July 22, 1996, 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 2:30 p.m.; open public hearing, 2:30 p.m. to 3 p.m.; William Freas or Sheila D. Langford, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Bethesda, MD 20852, 301–827–0314, or Leander Madoo, Center for Drug Evaluation and Research (HFD–21), 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Medical Imaging Drugs Advisory Committee, code 12540. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in diagnostic and therapeutic procedures using radioactive pharmaceuticals and contrast media used in diagnostic radiology.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 15, 1996, and

submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of the proposed participants, and the indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the Center for Biologics Evaluation and Research's product license application 95–0041 for Prostascint™ (Cytogen Corp.), a radiolabeled monoclonal antibody designed to detect sites of metastatic cancer which express the prostate specific membrane antigen.

Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. July 22 and 23, 1996, 8:30 a.m., Gaithersburg Marriott Washingtonian Center, Ballroom, 9751 Washingtonian Blvd., Gaithersburg, MD; July 24, 1996, 8:30 a.m., Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD. A limited number of overnight accommodations have been reserved at the Gaithersburg Marriott Washingtonian Center. Attendees requiring overnight accommodations may contact the hotel at 301–590–0044 and reference the FDA panel meeting block. Reservations will be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should contact Shirley Meeks, Conference Management, 301–594–1283, ext. 113. The availability of appropriate accommodations cannot be ensured unless prior notification is received.

Type of meeting and contact person. Open committee discussion, July 22, 1996, 8:30 a.m. to 2 p.m.; open public hearing, 2 p.m. to 3 p.m., unless public participation does not last that long; open committee discussion, 3 p.m. to 7 p.m.; open committee discussion, July 23, 1996, 8:30 a.m. to 11 a.m.; open public hearing, 11 a.m. to 11:30 a.m., unless public participation does not last that long; open committee discussion, 11:30 a.m. to 3 p.m.; open public hearing, 3 p.m. to 3:30 p.m., unless public participation does not last that long; open committee discussion, 3:30 p.m. to 7 p.m.; open committee discussion, July 24, 1996, 8:30 a.m. to 12 m.; Alfred W. Montgomery, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Obstetrics and Gynecology Devices Panel, code 12524. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 12, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On July 22, 1996, the committee will be asked to consider new technological advances in intrapartum electronic fetal monitoring (EFM). After hearing a series of presentations on the subject, the committee will discuss appropriate recommended testing for such new technology applications. FDA will consider these recommendations in the future development of testing guidelines. Committee deliberations on this subject will continue to the second day, July 23, 1996. FDA recognizes that there continues to be questions asked about EFM and its place in the clinical management of the patient in labor. The intent of the committee discussion is not to resolve issues related to clinical practice and clinical standards in the area of EFM. Rather, the focus of discussions will be on reasonable study methodologies for establishing the safety and effectiveness of the new fetal monitoring technologies.

On July 23, 1996, following the discussions on new technological advances in intrapartum EFM, the committee will discuss and vote on a premarket approval application (PMA) for an implantable stent used for in utero treatment of fetal postvesicular uropathy. Also, on July 23, 1996, following deliberations on the above PMA, the committee will discuss and vote on a PMA for a silicone barrier contraceptive device. On July 24, 1996, the committee will continue deliberations on the contraceptive device PMA.

Anti-Infective Drugs Advisory Committee

Date, time, and place. July 24, 25, and 26, 1996, 8:30 a.m., Holiday Inn—Silver Spring, Grand Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open public hearing, July 24, 1996, 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 5 p.m.; open committee discussion, July 25, 1996, 8:30 a.m. to 5 p.m.; open public hearing, July 26, 1996, 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 2 p.m.; Ermona B. McGoodwin or Danyiel D'Antonio, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Anti-Infective Drugs Advisory Committee, code 12530. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of infectious diseases and disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 19, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On July 24, 1996, the committee will discuss issues relevant to: (1) The use of silver sulfadiazine cream 1% in the treatment of patients with chronic wounds; and (2) new drug application (NDA) 19–832, Sulfamylon® Solution 5% (mafenide acetate, Mylan Pharmaceuticals, Inc.) for the control of bacterial colonization under moist dressings over meshed autografts on excised burn wounds. On July 25 and 26, 1996, the committee will discuss antibiotic resistance issues. In light of the significant public health impact of increasing bacterial resistance on the future usefulness of antimicrobial agents, FDA is soliciting from the advisory committee opinions and advice regarding the development of policy for antimicrobial drugs intended for the treatment of multidrug resistant (MDR) organisms. Issues for discussion include labeling for the treatment of MDR organism(s), and labeling as second line

therapy versus empiric therapy since widespread empiric use may decrease the drug's potential usefulness for treating MDR organisms. The agency encourages investigators, academicians, and members of the pharmaceutical industry with information relevant to the treatment of infections caused by MDR organisms, including current approaches to antimicrobial drug development, to respond to this notice.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: June 14, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–15942 Filed 6–21–96; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Psychopharmacologic Drugs Advisory Committee

Date, time, and place. July 15, 1996, 8:30 a.m., Holiday Inn—Silver Spring, Main Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Kennerly Chapman, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 1901 Chapman Ave., rm. 200, Rockville, MD 20852, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Psychopharmacologic Drugs Advisory Committee, code 12544. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of psychiatry and related fields.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations must notify the contact person before July 10, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the safety and effectiveness of Serlect® (sertindole), new drug application (NDA) 20–644, Abbott Laboratories, for use in the treatment of psychotic disorders.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee

meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: June 14, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–15943 Filed 6–21–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96D–0067]

Guidance for Industry in Designing Clinical Programs for Developing Human Drugs, Medical Devices, or Biological Products Intended for the Treatment of Rheumatoid Arthritis; Availability of Draft Guidance; Notice of Public Workshop on Juvenile Rheumatoid Arthritis

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled ''Discussion for Designing Clinical Programs for Developing Drugs, Devices, or Biological Products Intended for the Treatment of Rheumatoid Arthritis (RA).'' On March 27, 1996, the agency held a public workshop to discuss the draft guidance. The agency is now announcing a second public workshop to discuss the draft guidance as it pertains to juvenile rheumatoid arthritis (JRA). The draft guidance was prepared by the Rheumatology Working Group comprised of members from: The Center for Drug Evaluation and Research (CDER), the Center for Biologics Evaluation and Research, and the Center for Devices and Radiological Health. The workshop will enable experts in rheumatology clinical trials and interested representatives of industry, academia, and the public to exchange ideas on developing and assessing new treatment modalities for JRA and to discuss the types of claims that might be reasonably pursued, and evidence necessary to support such claims.

DATES: The public workshop will be held Tuesday, July 23, 1996, from 8 a.m. to 6 p.m. There is no registration fee for the workshop, but registration is requested before July 12, 1996. Interested parties are encouraged to register early because space is limited. Written comments on the draft guidance for consideration at the workshop should be submitted by July 12, 1996. The administrative docket will remain open until August 30, 1996, for the submission of written comments, data, information, or views on the draft guidance or the workshop.

ADDRESSES: The public workshop will be held at the Holiday Inn— Bethesda, Versailles III and IV, 8120 Wisconsin Ave., Bethesda, MD 20814. Persons interested in attending should Fax their registration to Rose E. Cunningham at 301–594–5493. The Fax should include the participant's name and title; organization name, if any; address; and telephone and Fax numbers.

A copy of the draft guidance document entitled ''Discussion for Designing Clinical Programs for Developing Drugs, Devices, or Biological Products Intended for the Treatment of Rheumatoid Arthritis (RA)'' is available through CDER's Fax-on-Demand, 301–827–0577 or 800–342–2722, under the index ''Guidance to industry,'' document no. 0806. The agenda for the workshop is available as document no. 0504. The draft guidance, agenda, and registration are also available on the CDER Home Page on the World Wide Web at http://www.fda.gov/cder/jraworkshop.htm (these must be lower case). A transcript of the workshop will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 business days after the workshop at a cost of 10¢ per page.

Written comments on the draft guidance or the workshop should be submitted to the Dockets Management Branch (HFA–305), 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Rose E. Cunningham, Center for Drug Evaluation and Research (HFD–6), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5470.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 6, 1996 (61 FR 8961), FDA announced the availability of a draft guidance document entitled ''Discussion for Designing Clinical Programs for Developing Drugs, Devices, or Biological Products Intended for the Treatment of Rheumatoid Arthritis (RA)'' also referred to as ''Draft Guidance for Industry in Designing Clinical Programs for Developing Human Drugs, Medical Devices, or Biological Products Intended for the Treatment of Rheumatoid Arthritis.'' The agency also announced that it was holding a public workshop on March 27, 1996, to discuss the draft guidance. The agency is now announcing a second public workshop to discuss the draft guidance as it pertains to JRA.

New treatment modalities being developed for JRA may have beneficial effects that are different from traditional agents. However, uncertainty exists among experts in rheumatology clinical trials about the types of labeling claims that might be reasonably pursued for these agents and what evidence would be necessary to support such claims. In addition, there is a need to discuss endpoints for JRA trials, and whether functional/quality-of-life or radiographic claims are appropriate.

FDA, through its Rheumatology Working Group, has developed a draft guidance document for industry that provides an overview of some design problems that are encountered in JRA trials intended for product development. FDA is sponsoring a public workshop to provide an opportunity for experts in rheumatology clinical trials and interested representatives of industry, academia, and the public to discuss the working draft of the guidance document and to exchange ideas on developing and assessing new treatment modalities for JRA as well as the types of claims that might be reasonably pursued and the evidence necessary to support such claims.

After consideration of all data, information, or views submitted on the draft guidance at the workshop, FDA will issue a final guidance document and announce its availability with a notice published in the Federal Register.

Dated: June 17, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–15991 Filed 6–21–96; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute of Mental Health; Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 2, 1996.

Time: 3 p.m.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Phyllis D. Artis, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: July 3, 1996.

Time: 3 p.m.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Phyllis D. Artis, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 2087, Telephone: 301, 443–6470.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable materials and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: June 17, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–15931 Filed 6–21–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4056–N–02]

Office of the Assistant Secretary for Policy Development and Research; FY 1996 Funding Availability for the Community Outreach Partnership Centers (COPC) Program: Notice of Correction of Eligibility

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: FY 1996 funding availability; notice of correction.

SUMMARY: On May 16, 1996, HUD published a notice that announced the availability of $7.4 million for the Community Outreach Partnership Centers program. The purpose of this notice is to revise the eligibility criteria for first-round COPC grantees applying for Institutionalization Grants. The notice also revises the amount set aside for these grants.

DATES: The notice does NOT revise the application deadline of July 25, 1996, set forth in the May 16, 1996 Notice of Funding Availability (NOFA).

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8110, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1537; (TTY (202) 708–0770, or 1–800–877–8399). Other than the ''800'' number, these are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On May 16, 1996, HUD published a notice that announced the availability of $7.4 million in funding for the Community Outreach Partnership Centers (COPC) program. The NOFA added a new type of grant under the program—Institutionalization Grants—for which only first-round (FY 1994) COPC grantees are eligible to compete. The NOFA placed two further conditions on eligibility for these grants. First, universities awarded Joint Community Development (JCD) grants are not eligible for Institutionalization Grants. Second, institutions of higher education that received grants as consortia in the first-round are required to apply again as consortia, with all current member institutions participating in the proposed Institutionalization Grant, and with the same lead applicant as the current COPC.

A problem has arisen with these two criteria, which unfairly eliminates a consortium from the competition. A consortium, composed of three universities, won a first-round grant.

One of the institutions, who is the lead applicant on the COPC grant, is disqualified from applying for an Institutionalization Grant because it was awarded a JCD grant. Unfortunately, because of the consortia requirement, the other two universities are also disqualified, because they can not apply without the lead applicant. The two schools received no benefits from the JCD grant and it is unfair to penalize them for lead applicant's success.

Therefore, in any case where one member of a consortium received a JCD grant, but the other institutions in the consortium did not, these other institutions are eligible to apply for an Institutionalization grant, under the following conditions. First, the remaining consortium partners must apply as a consortium. Second, one of these partners must be designated the lead applicant. The $100,000 maximum amount for an Institutionalization Grant remains unchanged.

The total amount being set aside for Institutionalization Grants is increased to $1.2 million to provide funding for this additional potential grantee.

Dated: June 14, 1996.

Frederick J. Eggers,

Acting Assistant Secretary for Policy Development and Research.

[FR Doc. 96–16025 Filed 6–19–96; 4:02 pm]

BILLING CODE 4210–62–P

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. FR–4047–N–02]

NOFA for Fair Housing Initiatives Program; FY 1996 Competitive Solicitation; Notice of Amendment and Clarification

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Funding Availability (NOFA); Notice of Amendment.

SUMMARY: On May 24, 1996 (61 FR 26362), HUD published a NOFA announcing the availability of up to $12,106,000 in Fiscal Year 1996 funding for the Fair Housing Initiatives Program (FHIP). This document amends the May 24, 1996 NOFA by expanding the pool of organizations eligible for bonus points.

ADDRESSES: To obtain a copy of the application kit, please write the Fair Housing Information Clearinghouse, P.O. Box 9146, McLean VA 22102 or call the toll-free number 1–800–343–3442 (voice) or 1–800–290–1617 (TDD). Please also contact this number if information concerning this NOFA is needed in an accessible format.

FOR FURTHER INFORMATION CONTACT: Sharon Bower, Special Assistant, Office of Fair Housing Initiatives and Voluntary Programs, Room 5234, 451 Seventh Street SW., Washington, DC 20410–2000. Telephone number (202) 708–0800. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708–0800. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. NOFA Amendments

A Notice of Funding Availability (NOFA) announcing the Fiscal Year (FY) 96 availability of $12,106,000 under the Fair Housing Initiatives Program (FHIP) was published by HUD on May 24, 1996 (61 FR 26362). FHIP assists projects and activities designed to enforce and enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. The body of the May 24, 1996 NOFA contains information concerning the purpose of the NOFA, eligibility, available amounts, how to apply for funding, and how selections will be made.

The May 24, 1996 NOFA establishes the eligibility standards for bonus points under the Private Enforcement Initiative. Paragraph I.(c)(2)(ii)(A) of the May 24, 1996 limits the receipt of 10 bonus points to PEI applications from FHIP grant recipients whose period of performance for all FHIP grants expired/will expire between September 30, 1995 and December 31, 1996.

The Department had intended to allow FHIP grant recipients to receive bonus points where all grants will expire between September 30, 1995 and December 31, 1996 except for their PEI-Special Project grants. For this reason, the Department has determined to amend the FY 1996 NOFA to permit these grantees to be eligible for the 10 bonus points under the PEI competition. The PEI-Special Project grant recipients applied in September 1994 under a FHIP competition which targeted mortgage-lending and insurance enforcement projects and were notified of their award in January 1995. This amendment is intended to increase the number of organizations that are eligible to receive the bonus points under the PEI competition. Because this notice is published 30 days prior to the application deadline of July 23, 1996, which was set in the prior NOFA, all applicants, including newly eligible applicants, will have 30 days notice of this amendment. Therefore, the Department is not extending the application deadline beyond July 23, 1996.

II. Technical Corrections

On page 26362, in column 3, the third sentence of paragraph one, under section I.(a) of the May 24, 1996 NOFA, reads: ''Instead, it prompts the Department to promote supporting these new fair housing enforcement organizations created under previous FHIP competitions and giving preference to those FHIP recipients whose grants expire between September 30, 1995 and December 31, 1996.'' The sentence is now continued by adding, ''including those FHIP grant recipients with a PEI-Special Project grant that does not expire until after December 31, 1996, but whose period of performance for all other FHIP grants expired/will expire between September 30, 1995 and December 31, 1996.'' This notice adds this additional language.

On page 26364, in column 2, paragraph I.(c)(2)(ii)(A), *Bonus Points*, reads, ''PEI applications from FHIP grant recipients whose period of performance for all FHIP grants expired/will expire between September 30, 1995 and December 31, 1996 will receive a bonus of ten additional points.'' An additional sentence is added immediately following this which reads, ''Furthermore, applicants with a PEI-Special Project grant that does not expire until after December 31, 1996, but whose period of performance for all other FHIP grants expired/will expire between September 30, 1995 and December 31, 1996, will also receive a bonus of ten additional points.'' This notice makes the necessary correction.

Accordingly, FR Doc. 96–4047, the FY 96 NOFA for the Fair Housing Initiatives Program (FHIP), published in the Federal Register on May 24, 1996 (61 FR 26362) is corrected and amended as follows:

1. In section I.(a), on page 26362, in column 3, the first paragraph, third sentence is revised to read as follows:

Instead, it prompts the Department to promote supporting these new fair housing enforcement organizations created under previous FHIP competitions and giving preference to those FHIP recipients whose grants expire between September 30, 1995 and December 31, 1996, including those FHIP grant recipients with a PEI-Special Project grant that does not expire until after December 31, 1996, but whose period of performance for all other FHIP grants expired/will expire between September 30, 1995 and December 31, 1996.

2. Paragraph I.(c)(2)(ii)(A), on page 26364, in column 2, is revised to read as follows:

(A) *Bonus Points.* PEI applications from FHIP grant recipients whose period of performance for all FHIP grants expired/will expire between September 30, 1995 and December 31, 1996 will receive a bonus of ten additional points. Furthermore, applicants with a PEI-Special Project grant that does not expire until after December 31, 1996, but whose period of performance for all other FHIP grants expired/will expire between September 30, 1995 and December 31, 1996, will also receive a bonus of ten additional points.

Dated: June 20, 1996.

Elizabeth K. Julian,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 96–16211 Filed 6–20–96; 3:53 pm]

BILLING CODE 4210–28–P

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Federally Assisted Low-Income Housing Drug Elimination; Announcement of Funding Awards; Fiscal Years 1993 and 1994

[Docket Nos. FR–3371–N–03 and FR–3576–N–03]

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding awards made by the Department under two Notices of Funding Availability (NOFA) for the Federally Assisted Low-Income Drug Elimination Grant Program. This announcement contains the names and addresses of Fiscal Year 1993 and 1994 Federally Assisted Low-Income Housing Drug Elimination Program grantees and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Michael Diggs, Office of Multifamily Housing Asset Management and Disposition, Department of Housing and Urban Development, room 6176, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0558 (this is not a toll-free number). A telecommunications device for hearing- and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: These grants are authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et. seq.*), as amended by Section 581 of the Cranston-Gonzales National Affordable Housing Act (NAHA) of 1990 (42 U.S.C. 8011). Section 581 of NAHA expanded the Drug Elimination Program to include Federally assisted, low-income housing. In Fiscal Year 1993, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriation Act 1993, (Pub. L. 102–389; approved October 6, 1992) appropriated funds for Federally Assisted Low-income housing. In Fiscal Year 1994, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriation Act 1994 (Pub. L. 103–124; approved October 28, 1993) appropriated funds for Federally Assisted Low-income housing.

Fiscal Year 1993 funds were announced in a NOFA published in the Federal Register on November 23, 1992 (57 FR 54995). The notice announced the availability of $10 million for Federally Assisted Low-income housing. Fiscal Year 1994 funds were announced in a NOFA published in the Federal Register on January 20, 1994 (59 FR 3282). The notice announced the availability of $12.3 million for Federally Assisted Low-income housing. The purpose of the Drug Elimination program is to provide funding for carrying out drug elimination activities in accordance with the criteria of eligible activities as outlined in the NOFA. Applications are awarded funding if they meet the eligibility criteria indicated in the NOFA.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is hereby publishing the names and addresses of the grantees that received funding under these notices, and the amount of funds awarded to each. This information is provided in Appendix A to this document.

Dated: June 17, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

Fiscal Years 1993 and 1994 Drug Grantees

Region I

Project Name: Harbor Point Apartments
FHA Number: 023–36602
Recipient Name: Harbor Point Apartments Company
Location of Project: One North Point Drive, Dorchester, MA 02125
Property Contact: Etta Johnson (617) 288–5701
Grant Amount: $174,900

Project Name: Villa Victoria II
FHA Number: 023–35200
Recipient Name: ETC Developers, Inc.
Location of Project: 630 Tremont Street Boston, MA 02118
Grant Amount: $132,000

Project Name: Madison Park Village
FHA Number: 023–35245
Recipient Name: Madison Park Housing Corporation
Location of Project: 122 DeWitt Drive Roxbury, MA 02120
Property Contact: Dianna J. Kelly (617) 445–8338
Grant Amount: $92,400

Project Name: Countryside Village
FHA Number: 023–44096
Recipient Name: Marlboro Arms Associates
Location of Project: 450–460 Boston Post Road Marlboro, MA 01752
Grant Amount: $34,500

Project Name: Pynchon Terrace Apartments
FHA Number: 023–44114
Recipient Name: Pynchon Partners/ Pynchon Terrace
Location of Project: 101 Lowell Street Springfield, MA 01107
Grant Amount: $96,000

Project Name: Castle Square Apartments
FHA Number: 023–55031
Recipient Name: Trebhershaw Limited Partnership
Location of Project: South End & Chinatown Boston, MA 02118
Grant Amount: $168,900

Project Name: Seniority House
FHA Number: 023–SH008
Recipient Name: Springfield Hobby Club Housing, Inc.
Location of Project: 307 Chestnut Street Springfield, MA 01104
Grant Amount: $15,076

Project Name: Lower Garden Apartments
FHA Number: 017–44154
Recipient Name: Lower Gardens Associates
Location of Project: 343 Garden Street Hartford, CT 06112
Grant Amount: $126,800

Project Name: Earle Street Apartments
FHA Number: 017–35002
Recipient Name: Earle Street Associates
Location of Project: 343 Garden Street Hartford, CT, 06112
Grant Amount: $175,000

Total Regional Grant: $1,015,576

Region II

Grant Recipients Are

Bedford Gardens, 012–133–NI, Brooklyn, NY, $173,800. Bedford Gardens Company

Roosevelt Gardens, 012–57058, Bronx, NY, $119,800. Roosevelt Gardens Associates

Broadway East Townhouse, 012–017–NI, Kingston, NY, $97,926. Kingston Property Associates LP

Aldus Green, NY36, H108–001, Bronx, NY, $174,200. Aldus Green Company

Arlington Terrace, 012–083–NI, Staten Island, NY, $171,660. North Shore Associates

Morrisania II, 012–57056, Bronx, NY, $175,000. Morrisania Towers Housing Company

Restore (Brooklyn Apts & Bedfor Stuy Restore), 012–44110 and 012–149–NI Brooklyn, NY, $167,500. Bedford Stuyvesant Restoration Corp.

Oakwood Plaza, NJ39–H085–109, Elizabeth, NJ, $115,000. Pierce Manor of Elizabeth Associates

Georgia King Village, 031–032–NI, Newark, NJ, $96,859. Georgia King Associates

Homestead Village, 012–44076, Coram, NY, $174,979. Homestead Village Associates

Starrett Spring Creek, 012–035–NI, Brooklyn, NY, $25,300. Starrett City Associates

Region III U.S. HUD Department—1993 Drug NOFA Award Grantees

Baltimore

Project Name: Pimlico Apartments FHA #052–35061

Recipient Name: John H. Van Rusten, Pimlico Associates, Ltd., 4718 Garrison Rd, Suite A, Baltimore, MD 21215

Location of Project: Baltimore, Maryland

Amount of Grant Award: $43,600.00

Project Name: Madison Park North Apartments FHA #052–44055

Recipient Name: Elliot Bernold, President, Edgewood Management Corporation, 4340 East-West Highway, Suite 300, Bethesda, Maryland 20814

Location of Project: 738 W North Ave, Baltimore, Maryland 21217

Property Contract: Edgewood Mgt (301)654–9110/Larry Davis (410)728–6100

Grant Amount: $175,000

Project Name: Woodland Street Apartments FHA #052–44197

Recipient Name: Elliot Bernold, President, Edgewood Management Corporation, 4340 East-West Highway, Suite 300, Bethesda, Maryland 20814

Location of Project: 1300–1510 Even Pennsylvania Ave/1501–1513&1/2 Argyle Ave., Baltimore, Maryland 21201

Property Contract: Edgewood Mgt (301)654–9110/Larry Davis (410)728–6100

Grant Amount: $86,040

Richmond, VA

Project Name: Friendship Village Apartments FHA #051–35017

Recipient Name: Janaka Cooper, Virginia Mountain Housing, Inc., 4101 Holly Road, Suite 202, Virginia Beach, VA 23451

Location of Project: Virginia Beach, VA

Amount of Grant Award: $164,000.00

Project Name: Heritage Acres X FHA #051–35327

Recipient Name: Mac Kincaid, Heritage Acres & Suffold, Partnership 1915 Nansemond Parkway, Suffolk, VA 23434

Location of Project: Suffolk, VA

Amount of Grant Award: $57,653.00

Project Name: Bermuda Run Apartments FHA #051–35316

Recipient Name: Carol A. Mason, Bermuda Run II Limited Partnership 2512 West Cary Street, Richmond, VA 23220

Location of Project: Richmond, VA

Amount of Grant Award: $175,000.00

Project Name: Pine Oaks Village Apartments FHA #051–35296

Recipient Name: Charles C. Nimmo, Senior Vice President, F&W Management Corporation, P.O. Box 20809, 2917 Penn Forest Blvd., Suite 200, Roanoke, VA 20418–0525

Location of Project: Virginia Beach, VA

Amount of Grant Award: $52,735.50

Project Name: Brightwood Manor FHA #051–44196

Recipient Name: Charles D. Wilkins, Jr., NCHP, 11410 Isaac Newton Square, North, Reston, VA 22090–5012

Location of Project: Roanoke, VA

Amount of Grant Award: $32,922.50

Project Name: Ruffin Road Apartments FHA #051–44201

Recipient Name: Charles S. Wilkins, Jr., NCHP 11410 Isaac Newton Square, North, Reston, VA 22090–5012

Location of Project: Richmond, Virginia

Amount of Grant Award: $175,000.00

Project Name: Langley Square 1 & 2 FHA # 051–44100 & 051–44190

Recipient Name: Elliot Bernold, President, Edgewood Management Corporation, 4340 East-West Highway, Suite 300, Bethesda, MD 20814

Location of Project: Hampton, Virginia

Amount of Grant Award $160,364.00

Project Name: Walmsley Terrace FHA #051–44203

Recipient Name: Charles S. Wilkins, Jr., NCHP, 11410 Isaac Newton Square, North, Reston, VA 22090–5012

Location of Project: Richmond, VA

Amount of Grant Award $48,000.00

Project Name: Southside Gardens (Rehab Development Financed by VA Housing Development Authority) FHA #VA36–H027–123

Recipient Name: Robert J. Herlerth, Vice President, Gull AGE Properties, Inc., One North Jefferson Street, St. Louis, Missouri 63103, Location of Project: Portsmouth, Virginia, Amount of Grant Award $171,659.00

Washington, D.C.

Project Name: Paradise at Parkside FHA #000–55002

Recipient Name: Marilyn Melkonian, Jay Street Associates, 1074 Thomas Jefferson, N.W., Washington, D.C. 20007

Location of Project: Washington, D.C.

Amount of Grant Award: $175,000.00

Project Name: Clifton Terrace FHA #000–55034

Recipient Name: George Marshall, President, Clifton Terrace Associates, P.O. Box 18447, Raleigh, NC 27609

Location of Project: Washington, D.C.

Amount of Grant Award: $128,430.00

Project Name: Louden House FHA #000–44147

Recipient Name: Charles S. Wilkins, Jr., NCHP, 11410 Isaac Newton Square, North, Reston, VA 22090–5012

Location of Project: Washington, D.C.

Amount of Grant Award: $138,376.00

Project Name: Gibson Plaza FHA #000–44098

Recipient Name: Rev. Ernest R. Gibson, President, First Rising Mt. Zion Housing Corporation, 1443 Pennsylvania Avenue, S.E., Washington, D.C. 20003

Location of Project: Washington, D.C.

Amount of Grant Award: $101,700.00

Project Name: Chesapeake-YUMA FHA # (NOT INSURED)

Recipient Name: Mr. H.R. Crawford, Chesapeake YUMA Apartments, 1443 Pennsylvania Ave., S.E., Washington, D.C. 20003

Location of Project: Washington, D.C.

Amount of Grant Award: $68,452.00

Project Name: Ridgecrest Heights FHA #000–55010

Recipient Name: Mr. Deane Earl Ross, Pollin Memorial Associates, Ltd., 881 Alma Real Drive, Suite 205, Pacific Palisades, California 90272

Location of Project: Washington, D.C.

Amount of Grant Award: $167,065

Pittsburgh

Project Name: East Mall Apartments FHA #033–44007

Recipient Name: David N.R. Oyer, Sr. Vice President, Federal American Properties, 6231 Penn Avenue, Pittsburgh, PA 15206
Location of Project: Pittsburgh, PA
Amount of Grant Award: $56,820.00

Project Name: Liberty Park Apartments FHA #033–55008
Recipient Name: David N.R. Oyer, Liberty Park Associates, 3038–C N. Federal Highway, Ft. Lauderdale, FL 33306
Location of Project: Pittsburgh, PA
Amount of Grant Award: $134,876.00

Project Name: Penn Circle Towers Apartments FHA #033–44002
Recipient Name: David N.R. Oyer, Sr. Vice President, Federal American Properties, 6231 Penn Avenue, Pittsburgh, PA 15206
Location of Project: Pittsburgh, PA
Amount of Grant Award: $59,126.00

Charleston

Project Name: Spring Hill Apartments FHA #045–44002–LDP/SUP
Recipient Name: Arnold L. Karp, City Park Associates, 12250 Rockville Pike, Suite 200, Rockville, MD 20852
Location of Project: Charleston, WVA
Amount of Grant Award: $20,545.00

REGION IV List of Drug Elimination Grant Recipients

Name of Project: Villa Monte Apartments
Project Number: 061–44015
Location: Atlanta, Georgia
Recipient Name: Villa Monte Apartments, Ltd.
Amount of Award: $157,600

Name of Project: Fairburn-Gordon Apartments
Project Number: 061–44005
Location: Atlanta, Georgia
Recipient Name: National Corporation for Housing Partnerships
Amount of Award: $43,248

Name of Project: Ozark Homes
Project Number: 062–35003
Location: Ozark, Alabama
Recipient Name: Ozark Homes, Ltd.
Amount of Award: $157,921

Name of Project: Highland Village Apartments
Project Number: 062–44007
Location: Montgomery, Alabama
Recipient Name: Highland Village, Inc.
Amount of Award: $75,000

Name of Project: Stonegate Village
Project Number: 062–92002
Location: Decatur, Alabama
Recipient Name: A.M.E. Homes of Decatur, Ltd.
Amount of Award: $98,500

Name of Project: Bayamon Housing Development
Project Number: 056–35064
Location: Hato Tejas, Bayamon
Recipient Name: Bayamon Housing Development
Amount of Award: $170,560

Name of Project: Lakeshore II Apartments
Project Number: 054–55014
Location: Greenville, SC
Recipient Name: BFDG Lakeshore II, Apartment Associates
Amount of Award: $110,650

Name of Project: Gentle Pines
Project Number: 054–36627
Location: West Columbia, SC
Recipient Name: Gentle Pines-West Columbia Associates, Ltd.
Amount of Award: $75,800

Name of Project: Bailey Lane Apartments
Project Number: 053–35328
Location: Vanceboro, NC
Recipient Name: Bailey Lane Apartments, Ltd.
Amount of Award: $69,400

Name of Project: Cokey Apartments
Project Number: 053–44150
Location: Rocky Mt., North Carolina
Recipient Name: Cokey Apartments, Ltd.
Amount of Award: $20,250

Name of Project: Pine Grove Apartments
Project Number:
Location: Sharpsburg, North Carolina
Recipient Name: Wilson Associates, Ltd.
Amount of Award: $13,800

Name of Project: Southside Acres Apartments
Project Number: 053–35442
Location: Rocky Mt., North Carolina
Recipient Name: Southside Acres Associates
Amount of Award: $22,205

Name of Project: Durham Village Apartments
Project Number: 053–35334
Location: Burgaw, North Carolina
Recipient Name: Durham Village Apartments, Ltd.
Amount of Award: $6,495

Name of Project: Barrington Oaks Apartments
Project Number: 053–44074
Location: Charlotte, North Carolina
Recipient Name: Barrington Oaks Apartments Associates
Amount of Award: $175,000

Name of Project: Walnut Terrace
Project Number: NC19–0014022
Location: Williamston, North Carolina
Recipient Name: Williamston Housing Authority
Amount of Award: $48,250

Name of Project: Clancy Hills Apartments
Project Number: 053–44212
Location: Salisbury, North Carolina
Recipient Name: Clancy Hills Ltd. Partnership
Amount of Award: $108,500

Name of Project: Edgewood Manor Apartments
Project Number: 065–35082
Location: Gulfport, Mississippi
Recipient Name: Edgewood Manor Associates
Amount of Award: $91,531

Name of Project: Glendale Apartments
Project Number: 065–35042
Location: Kosciusko, Mississippi
Recipient Name: Attala Associates, Ltd.
Amount of Award: $28,005

Name of Project: Metro Manor Apartments
Project Number: 065–35263
Location: Jackson, Mississippi
Recipient Name: Metro Manor, Ltd.
Amount of Award: $174,527

Name of Project: Magnolia Terrace Apartments
Project Number: 063–44022
Location: Tallahassee, Florida
Recipient Name: Consolidated Investments, Ltd.
Amount of Award: $73,465

Name of Project: Lake Mann Garden Apartments
Project Number: 067–44107
Location: Orlando, Florida
Recipient Name: Gordon Stann Nutt
Amount of Award: $159,202

Name of Project: Marathon Apartments
Project Number:
Location: Marathon, Florida
Recipient Name: Marathon Housing Associates, Ltd.
Amount of Award: $162,000

Name of Project: Key Plaza Apartments
Project Number:
Location: Key West, Florida
Recipient Name: Key Plaza Apartments-II, Ltd.
Amount of Award: $135,335

Name of Project: College Trace Apartments
Project Number: 063–35205
Location: Pensacola, Florida
Recipient Name: College Trace Apartments, Ltd.
Amount of Award: $50,799

Name of Project: Palms Apartments
Project Number: 067–44065
Location: Orlando, Florida
Recipient Name: Orlando Housing Investors, Ltd.
Amount of Award: $165,570

Name of Project: Briarwood Apartments, I
Project Number: 063–44063
Location: Tallahassee, Florida
Recipient Name: Briarwood, Ltd.
Amount of Award: $117,928

Name of Project: Escambia Arms Apartments

Project Number: 063–35026
Location: Pensacola, Florida
Recipient Name: National Corporation for Housing Partnerships
Amount of Award: $16,500

Name of Project: Truman Arms Apartments, I
Project Number: 063–35027
Location: Pensacola, Florida
Recipient Name: C.A. Hobbs, Jr. & Lauryce G. Hobbs
Amount of Award: $148,043

Name of Project: Truman Arms Apartments, II
Project Number: 063–35066
Location: Pensacola, Florida
Recipient Name: C.A. Hobbs, Jr. & Lauryce G. Hobbs
Amount of Award: $77,718

Name of Project: Sandlake Villas Apartments
Project Number: 067–44148
Location: Orlando, Florida
Recipient Name: Sandlake Housing Ltd. Partnership
Amount of Award: $34,174

Name of Project: Middletowne Apartments
Project Number: 063–44049
Location: Orange Park, Florida
Recipient Name: Orange Park Project, Ltd.
Amount of Award: $117,761

Name of Project: Lincoln Fields Apartments
Project Number: 066–35161
Location: Miami, Florida
Recipient Name: Lincoln Fields, Ltd.
Amount of Award: $175,000

Name of Project: Lee Park Apartments
Project Number: 066–44024
Location: S. Miami, Florida
Recipient Name: Lee Park Cooperative
Amount of Award: $51,067

Name of Project: Mission Hills Apartments
Project Number: 063–35183
Location: Tallahassee, Florida
Recipient Name: Mission Hills Apartments, Ltd.
Amount of Award: $89,668

Name of Project: 22nd Avenue Apartments
Project Number: 066–44017
Location: Miami, Florida
Recipient Name: Bonita Ltd. Partnership
Amount of Award: $60,000

Name of Project: Mandarin Trace Apartments
Project Number: 063–35204
Location: Jacksonville, Florida
Recipient Name: Mandarin Trace Apartments, Ltd.
Amount of Award: $35,903

Name of Project: Hamilton Garden Apartments
Project Number:
Location: Bartow, Florida
Recipient Name: National Corporation for Housing Partnerships
Amount of Award: $101,765

Name of Project: Tabernacle Apartments
Project Number: 087–35007
Location: Knoxville, TN
Recipient Name: Tabernacle Apartments, Ltd.
Amount of Award: $122,220

Name of Project: College Hills Apartments
Project Number:
Location: Knoxville, TN
Recipient Name: Knoxville's Community Development Corporation
Amount of Award: $175,000

Name of Project: Dellway Villa Apartments
Project Number: 086–35124
Location: Nashville, TN
Recipient Name: L.H. Hardaway, Jr.
Amount of Award: $35,200

Name of Project: Westside Apartments
Project Number:
Location: Nashville, TN
Recipient Name: Westside Apartments Ltd. Partnership
Amount of Award: $114,000

Name of Project: Litton Park Apartments
Project Number:
Location: Nashville, TN
Recipient Name: Litton Apartments, Ltd.
Amount of Award: $159,800

Name of Project: Ridgecrest Apartments
Project Number:
Location: Memphis, TN
Recipient Name: Associated Investors of Memphis
Amount of Award: $28,895

Region V

Vistula Heritage Village, 042–35298, Burnett Ware, Toledo, OH $175,000
Capital Park Apartments, 043–44003, Mary Lou Wilson, Columbus, OH $175,000
Lancaster Village, 044–44005, Leona Patterson, Pontiac, MI $173,715
Clemens Ct/Newport Apartments, 044–44219, Frank Carswell, Clifton Township, MI $175,000
Arrowwood Hills, 044–55083, Patricia S. Dixon, Ann Arbor, MI $109,863
Danner Park Apartments, 046–35027, David Hendy, Dayton, OH $28,064,
Elder Apartments, 046–35333, Thomas Denhart, Cincinnati, OH $134,720
CreekWood Townhouses Apartments, 046–35506, Rev. Larry L. Harris, Wilmington, OH $53,665
Parkside Apartments, 046–35557, Lenore E. Varney, Dayton, OH $92,721
Rhine Main Apartments, 046–NI061, Thomas Denhart, Cincinnati, OH $90,755
Saint Rest #2, 046–NI065, Thomas Denhart, Cincinnati, OH $21,225
Willow Vista Apartments, 047–94007, Glenn Kirkahm, Lansing, MI $106,990
Prairie Courts, IL06–0036–001–RH9, Kathryn M. Kelly, Chicago, IL $175,000
Damen Courts, 071–32086, Robert M. Stone, Chicago, IL $164,000
Clifton/Magnolia Apartments, 071–35466/35499, Janet Hasz, Chicago, IL $140,000
Drexel Court Apartments, 071–35471, Phillip A. Cammenga, Chicago, IL $76,558
Bennett Apartments, 071–35506, Lynn Railsback, Chicago, IL $14,480
Bethel New Life, 071–35524, Elzie Higginbottom, Chicago, IL $116,000
Kenwood Apartments, 071–35526, Elzie Higginbottom, Chicago, IL $89,360
Washington Court Apartments, 071–35593, Lynn Railsback, Chicago, IL $128,460
Grove Parc Plaza, 071–36654/94031, Vincent Knight, Chicago, IL $146,412
Northwest Towers, 071–44009, Elzie Higginbottom, Chicago, IL $175,000
Lake Park Manor, 071–44031, Elzie Higginbottom, Chicago, IL $80,000
Lake Park Apartments, 071–44047, Elzie Higginbottom, Chicago, IL $67,140
Foxview Apartments I, 071–44069, Diane Pedersen, Carpentersville, IL $151,491
Lake Grove Village, 071–44082, Elzie Higginbottom, Chicago, IL $175,000
Woodlawn Apartments, 071–44154, Carole Millison, Chicago, IL $174,067
Englewood Terrace, 071–55028, John Hayes, Chicago, IL $175,000
Dauphin Avenue Apartments, 071–55029, Elzie Higginbottom, Chicago, IL $71,990
NorthEastWood Apartments, 071–55113, Anthony J. Fusco, Jr., Chicago, IL $175,000
6000 S. Indiana Apartments, 071–55119, Elzie Higginbottom, Chicago, IL $175,000
Wentworth Garden, 071–55155, Richard R. Wood, Chicago, IL $175,000
Belle Manor Apartments, 072–44005, Ronald L. Bohlen, Alton, IL $93,700
Parkside/Mansard Square Apartments, 072–94001, Patricia Jeffers, Champaign, IL $154,495
Parkwood Apartments, 073–35344, Deborah Bell, Indianapolis, IN $157,865
Parkwood Apartments II, 073–35351, Deborah Bell, Indianapolis, IN $0
Sommerset Townhomes, 075–35316, Janet Jungel/Richard J. Riddle, Madison, WI $175,000
Plymouth Avenue Townhomes, 092–44125, Roger L. Jahn, Minneapolis, MN $167,000

Findlay Place Apartments, MHFA 75–002, Thomas J. Johnson, Minneapolis, MN $165,000

Region VI

Point East Apartments, 115–44127, Richard I. Hayley, San Antonio, TX $174,088
Westgate Apartments, 082–55003, Westgate Apartments, Inc., Little Rock, AR $103,100
*Valley Drive Site, Las Cruces Housing Authority, Las Cruces, NM $175,000
Village Park South I & II, Village Park South, Inc., Texarkana, AR $80,366
Southeast Apartments, 082–35005, Jefferson Apartment Co., Pine Bluff, AR $170,000
*Wayman Manor, 112–44029, Wayman Manor, Temple, TX $118,720
*Pinewood Park Apartments, 114–35010, Pinewood Park apartments, Lufkin, TX $68,510
*Villa D'Ames, 064–92002, Christopher Homes, Inc., Marerro, LA $174,790
Willowbend I & II, 082–44027, Willow Bend, Inc., Little Rock, AR $51,633
*Southport II, 112–55050, Southport Charitable Trust, Dallas, TX $72,300
*Stone Vista Apartments, Stone Vista-Fairfield Development Co., Shreveport, LA $155,895
*French Embassy Apartments, 115–44151, Texas Frech Embassy Limited Partnership, Austin, TX $92,343
*Tall Timbers Apartments, 114–35249, Tall Timbers Apartments, Conroe, TX $175,000
Mockingbird Run, 114–35039, Christopher Village, Ltd., Bryan, TX $175,000
*Cooper Road Plaza, 059–35039, Post 525 Cooper Road Plaza, Inc., Shreveport, LA $84,915
Terrace View Apartments, 112–55037, Terrace View Apartments, Grand Prairie, TX $107–772

Region VII

Homes of Oakridge 074–35003/44015, Homes of Oakridge and Des Moines, Area Council of Churches, 1236 Oakridge Drive, Des Moines, IA 50314, $99,692
Oakridge Apartments, 084–35026, Oakridge Apartments, Ltd., 1205 Angelique, St. Joseph, MO 64501, $93,342
Columbus Square, 085–35337, National Corporation for Housing Partnerships, 917 Cole, St. Louis, MO 63101, $50,660
Jeff, Vander, Lou #15/16/18/19, 085–35197/35262, National Corporation for Housing Partnerships, 2807 Gamble, St. Louis, MO 63106, $50,446
Layayette Towne, 085–35207, National Corporation for Housing Partnerships, 1410 Ohio St., St. Louis, MO 63104, $93,384
Murphy Blair I, 085–57004, First Murphy Blair Redevelopment Corp., 1201 Walt Bowers, St. Louis, MO 63106, $92,971
Murphy Blair II, 085–35304, Murphy Blair Associates II, 1410 Chambers, St. Louis, MO 63106, $40,838
Colony North, MO36K004/005/006/007, Northland Associates, 7502 Park Town North, St. Louis, MO 63136, $169,500

Region VIII

Clare Gardens, 101–35029, Denver, CO, Clare Gardens, Inc., $42,963
La Alma Homes, 101–35292, Denver, CO, La Alma Homes, $20,201
Lincoln Park, 101–35294, Denver, CO, National Housing Partnership, $32,170
GHB Housing, 101–35300, Colorado Springs, CO, GHB Housing, Inc., $23,251
Capitol Hill Apartments, 101–44153, Denver, CO, Security Management, $81,351
Browning Apartments, Ogden, UT, Kier Management Corporation, $35,480
Madison Manor, Ogden, UT, Kier Management Corporation, $72,412
Mountain Range/Peery, Ogden, UT, Kier Management Corporation, $35,780
Mountain Range/Mount View, Ogden, UT, Kier Management Corporation, $28,910
Mountain Range/Evergreen, Ogden, UT, Kier Management Corporation, $21,780
Fontenelle, Ogden, UT, Kier Management Corporation, $35,780
Mountain Range/Revelle, Ogden, UT, Kier Management Corporation, $34,744
Stagecoach Apartments, 109–35050, Sheridan, WY, Absolute Rental Properties, Inc., $7,468

Region IX

The Gateway Garden Apartments, Menlo Park, CA 121–35832, $153,500
John F. Kennedy Manor I, Richmond, CA 121–55075, $151,787
John F. Kennedy Manor II, Richmond, CA 121–44142, $142,879
St. Johns, Richmond, CA 121–35034, $175,000
La Salle Apartments, San Francisco, CA 121–35531, $159,845
Barrett Terrace, Richmond, CA 121–44365, $175,000
Crescent Park Apartments, Richmond, CA 121–55017, $174,931
Bayview Hunters Point Apartments, San Francisco, CA 121–44440, $143,400
Shoreview Apartments, San Francisco, CA 121–35534, $138,193
Villa Nueva, San Ysidro, CA 129–35004, $158,448
St. Andrew's Manor, Oakland, CA 121–44818, $172,959
St. Patrick's Terrace, Oakland, CA 121–44816, $165,774
All Hallows Apartments, San Francisco, CA 121–44027, $175,000
Whispering Pines, Sacramento, CA 136–44122, $115,450
South Mountain Terrace, Phoenix, AZ 123–35139, $72,641

Region X

Project: Hydaburg Apartments
FHA Number: N/A (FmHA)
Recipient: Tlingit—Haida Regional Housing Authority
Location: Hydaburg, AK
Amount: $8,700

Project: Swan Creek Apartments
FHA Number: 127–44088
Recipient: Swan Creek Inc.
Location: Tacoma, WA
Amount: $116,200

Project: Woodland Apts.
FHA Number: 126–44118
Recipient: Infinity Management, Inc
Location: Coos Bay, OR
Amount: $16,280

Project: Winthrop Apts.
FHA Number: 127–35209
Recipient: Conifer Management, Inc.
Location: Tacoma, WA
Amount: $19,964

Project: Bayview Towers, Market House, Sunset House
FHA Number: 127–38044, N/A, 127–EH008
Recipient: Seattle Housing Authority
Location: Seattle, WA
Amount: $93,540

[FR Doc. 96–15987 Filed 6–21–96; 8:45 am]
BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Revised Technical/Agency Draft Recovery Plan for the Carolina Heelsplitter for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a revised technical/agency draft recovery plan for the Carolina heelsplitter (*Lasmigona decorata*). This rare freshwater mussel inhabits small- to medium-sized creeks and rivers with cool, slow- to moderate-flowing, well-oxygenated water. The Carolina heelsplitter currently has a very fragmented, relict distribution, but

historically was known from several locations in the Pee Dee and Catawba River systems in North Carolina and the Pee Dee and Savannah River systems (and possibly the Saluda River system) in South Carolina. Presently, the species is known to still survive in Waxhaw Creek (Catawba River system) and Goose Creek (Pee Dee River system) in Union County, North Carolina; Lynches River (Pee Dee River system) in Chesterfield, Lancaster, and Kershaw Counties, South Carolina; Flat Creek (Pee Dee River system), a small tributary to the Lynches River in Lancaster County, South Carolina; and Turkey Creek (Savannah River system) and two of its tributaries, Mountain and Beaverdam Creeks, in Edgefield County, South Carolina. The species has been restricted to short reaches of each of these streams, primarily as a result of impoundments and the general deterioration of water quality resulting from siltation and other pollutants contributed as a result of poor land-use practices. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before August 23, 1996, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the revised agency draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. John Fridell at the address shown above, telephone (704) 258–3939 (Ext. 225).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to the approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is the Carolina heelsplitter (*Lasmigona decorata*). The areas of emphasis for recovery actions are portions of the Pee Dee and Catawba River systems in North Carolina and the Pee Dee and Savannah River systems in South Carolina. Habitat protection, reintroduction, and preservation of genetic material are the major objectives of this recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 12, 1996.

Richard G. Biggins,

Acting Field Supervisor.

[FR Doc. 96–15745 Filed 6–21–96; 8:45 am]

BILLING CODE 4310–55–M

Notice of Availability of the Damage Assessment Plan, Phase II Injury Quantification, Damage Determination for the Coeur d'Alene Basin Natural Resource Damage Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 30 day comment period.

SUMMARY: Notice is given that the document entitled, ''Coeur d'Alene Basin Natural Resource Damage Assessment Plan, Phase II Injury Quantification, Damage Determination (The Plan) will be available for public review and comment on the date of publication in the Federal Register . The U.S. Department of the Interior, Coeur d'Alene Tribe, and USDA Forest Service are trustees (The Trustees) for natural resources and are conducting a Natural Resource Damage Assessment for injuries to trust resources in the Coeur d'Alene River Basin.

DATES: Written comments on the plan must be submitted on or before July 24, 1996.

ADDRESSES: Requests for copies of The Plan may be made to:

U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, OR 97232–4181

Coeur d'Alene Tribe, 424 Old Sherman Avenue, Suite 306, Old City Hall, Coeur d'Alene , ID 83814

Bureau of Land Management, 1808 N. 3rd Street, Coeur d'Alene, ID 83814

USDA Forest Service, 200 East Broadway, P.O. Box 76699 Missoula, MT 59807.

Comments on the plan should be sent to the Coeur d'Alene Tribe at the address listed above. The Tribe will then be providing copies of all comments to the other trustees.

SUPPLEMENTARY INFORMATION: The Trustees are undertaking Phase II of an assessment of suspected damages resulting from the injury to the natural resources of the Coeur d'Alene Basin which have been exposed to hazardous substances associated with mining activities. This exposure has caused injury Resultant damages to trustees resources will be assessed under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended.

The Trustees are following the guidance of the Natural Resource Damage Assessment Regulations (the regulations) found in 43 CFR part 11. The public review of The Plan announced by this notice is provided for in CFR 11.32(c) of the regulations.

Interested members of the public are invited to review and comment on The Plan. Copies are available for review at many community libraries in the Coeur d'Alene Basin, or one may obtain a copy from Trustee offices in the Coeur d'Alene area. All written comments will be considered by the Trustees, and included in the Report of Assessment, at the conclusion of this damage assessment process. Phase I Injury Determination was offered separately for public review and comment in November 1993. Separating the phases of the damage assessment plan for individual treatment allows The Trustees to work on the assessment in a logical progression, consistent with the regulations.

Dated: June 14, 1996.

Thomas Dwyer,

Acting Regional Director, U.S. Fish and Wildlife Service, Portland Oregon.

[FR Doc. 96–15818 Filed 6–21–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Chickahominy Indian Tribe, 8200 Lott Cary Road, Providence Forge, Virginia 23140, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on March 19, 1996, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under Section 83.9(a) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 1362–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

Dated: May 28, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–16003 Filed 6–21–96; 8:45 am]

BILLING CODE 4310–02–P

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Mendota Mdewakanton Dakota Community, P.O. Box 50835, Mendota, Minnesota 55150, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on April 11, 1996, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under Section 83.9(a) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 1362–MIB, 1849 C Street, N.W., Washington, D.C. 20240, Phone: (202) 208–3592.

Dated: May 28, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–16002 Filed 6–21–96; 8:45 am]

BILLING CODE 4310–02–P

Proclaiming Certain Lands as Reservation for the Forest County Potawatomie Community of Wisconsin Potawatomie Indians

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Reservation Proclamation.

SUMMARY: The Assistant Secretary—Indian Affairs proclaimed approximately 11,200 acres, more or less, as an addition to the reservation of the Forest County Potawatomie Community of Wisconsin Potawatomie Indians on May 6, 1996. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.3A.

FOR FURTHER INFORMATION CONTACT: Alice A. Harwood, Bureau of Indian Affairs, Division of Real Estate Services, Chief, Branch of Technical Services, MS–4522/MIB/Code 220, 1849 C Street, N.W., Washington, D.C. 20240, telephone (202) 208–3604.

SUPPLEMENTARY INFORMATION: A proclamation was issued on May 6, 1996, according to Public Law 100–581 (102 Stat. 2945) and the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), for the tracts of land described below. The land was proclaimed to be an addition to and part of the Forest County Potawatomie Community Indian Reservation for the exclusive use of Indians on that reservation who are entitled to reside at the reservation by enrollment or tribal membership.

Forest County Potawatomie Reservation

Forest County, Wisconsin

Township 35 North, Range 13 East, 4th Principal Meridian

All of Section 2 containing 640 acres, more or less;

Township 36 North, Range 13 East, 4th Principal Meridian

All of Sections 14, 26, and 36, containing 1,920 acres, more or less;

West Half of the East Half (W½E½), and East Half of the Southwest Quarter (E½SW¼) of Section 27, containing 240 acres, more or less;

North Half of the North Half (N½N½) of Section 34, except .5 acre in the Southwest corner of the Northwest Quarter of the Northwest Quarter (NW¼NW¼), containing 159.5 acres, more or less;

South Half of the Northwest Quarter (S½NW¼), Northeast Quarter of the Southwest Quarter (NE¼SW¼), and Northwest Quarter of the Southeast Quarter (NW¼SE¼) of Section 35, containing 160 acres, more or less;

Township 33 North, Range 15 East, 4th Principal Meridian

South Half of the Southwest Quarter (S½SW¼), and Northeast Quarter of the Southwest Quarter (NE¼SW¼) of Section 16, containing 120 acres, more or less;

Township 34 North, Range 15 East, 4th Principal Meridian

All of Section 10, containing 640 acres, more or less; West Half (W½),

North Half of the Northeast Quarter (N½NE¼), Southeast Quarter of the Northeast Quarter (SE¼NE¼), Northeast Quarter of the Southeast Quarter (NE¼SE¼) of Section 2, containing 480 acres, more or less;

South Half of the Northwest Quarter (S½NW¼), West Half of the Southwest Quarter (W¼SW¼) of Section 16, containing 160 acres, more or less;

Southeast Quarter of the Southeast Quarter (SE¼SE¼) of Section 19, containing 40 acres, more or less;

North Half of the Southeast Quarter (N½SE¼), Southwest Quarter of the Southeast Quarter (SW¼SE¼), Southeast Quarter of the Southwest Quarter (SE¼SW¼) of Section 20, containing 160 acres, more or less;

Northwest Quarter (NW¼), Northeast Quarter of the Northeast Quarter (NE¼NE¼), West Half of the Northeast Quarter (W½NE¼), West Half of the Southwest Quarter (W½SW¼) of Section 28, containing 360 acres, more or less;

West Half of the Northeast Quarter (W½NE¼), Northeast Quarter of the Northeast Quarter (NE¼NE¼) of Section 30, containing 120 acres, more or less;

Township 35 North, Range 15 East, 4th Principal Meridian

North Half (N½), Southeast Quarter (SE¼) of Section 22, containing 480 acres, more or less;

Northeast Quarter of the Southwest Quarter (NE¼SW¼), Northeast Quarter of the Southeast Quarter (NE¼SE¼) of Section 23, containing 80 acres, more or less;

North Half of the Southwest Quarter (N½SW¼) of Section 24, containing 80 acres, more or less;

Southeast Quarter of the Southeast Quarter (SE¼SE¼) of Section 25, containing 40 acres, more or less;

Northwest Quarter (NW¼) of Section 26, containing 160 acres, more or less;

East Half (E½), East Half of the Northwest Quarter (E½NW¼), Northeast Quarter of the Southwest Quarter (NE¼SW¼) of Section 28, containing 440 acres, more or less;

Southeast Quarter of the Northeast Quarter (SE¼NE¼) of Section 29, containing 40 acres, more or less;

Southwest Quarter (SW¼), East Half of the Northwest Quarter (E½NW¼), West Half of the Northeast Quarter (W½NE¼), Northeast Quarter of the Northeast Quarter (NE¼NE¼) of Section 32, containing 360 acres, more or less;

Northwest Quarter (NW¼), North Half of the Southwest Quarter (N½SW¼), West Half of the Northeast Quarter (W½NE¼), Northeast Quarter of the Northeast Quarter (NE¼NE¼) of Section 34, containing 360 acres, more or less;

East Half (E½), Southwest Quarter (SW¼), South Half of the Northwest Quarter (S½NW¼), Northeast Quarter of the Northwest Quarter (NE¼NW¼) of Section 36, containing 600 acres, more or less;

Township 34 North, Range 16 East, 4th Principal Meridian

Southwest Quarter (SW¼) of Section 2, containing 160 acres, more or less;

Northwest Quarter of the Southeast Quarter (NW¼SE¼), Southeast Quarter of the Southwest Quarter (SE¼SW¼) of Section 3, containing 80 acres, more or less;

Northeast Quarter of the Northwest Quarter (NE¼NW¼) of Section 10, containing 40 acres, more or less;

Northwest Quarter of the Northwest Quarter (NW¼NW¼), Southeast Quarter of the Northwest Quarter (SE¼NW¼), West Half of the Northeast Quarter (W½NE¼), Southeast Quarter of the Northeast Quarter (SE¼NE¼), Southeast Quarter (SE¼), East Half of the Southwest Quarter (E½SW¼), Southwest Quarter of the Southwest Quarter (SW¼SW¼) of Section 12, containing 480 acres, more or less;

North Half (N½), Southeast Quarter (SE¼) of Section 14, containing 480 acres, more or less;

East Half (E½) of Section 16, containing 320 acres, more or less;

East Half of the Southeast Quarter (E½SE¼) of Section 18, containing 80 acres, more or less;

Northeast Quarter (NE¼) of Section 20, containing 160 acres, more or less;

Northeast Quarter (NE¼) of Section 24, containing 160 acres, more or less;

Township 35 North, Range 16 East, 4th Principal Meridian

South Half (S½), Southwest Quarter of the Northwest Quarter (SW¼NW¼) of Section 24, containing 360 acres, more or less;

North Half (N½), Southwest Quarter (SW¼), West Half of the Southeast Quarter (W½SE¼) of Section 26, containing 560 acres, more or less;

East Half of the Southwest Quarter (E½SW¼), West Half of the Southeast Quarter (W½SE¼) of Section 30, containing 160 acres, more or less;

North Half (N½) of Section 34, containing 320 acres, more or less.

Title to the land described above is conveyed subject to any valid existing easements for public roads, highways, public utilities, pipelines, and any other valid easements or rights-of-way now on record.

Dated: May 6, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–15999 Filed 6–21–96; 8:45 am]

BILLING CODE 4310–02–P

Proclaiming Certain Lands as Reservation for the Saginaw Chippewa Indian Tribe of Michigan

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Reservation Proclamation.

SUMMARY: The Assistant Secretary—Indian Affairs proclaimed approximately 196 acres, more or less, as an addition to the Isabella Indian Reservation of the Saginaw Chippewa Indian Tribe of Michigan on May 8, 1996. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.3A.

FOR FURTHER INFORMATION CONTACT: Alice A. Harwood, Bureau of Indian Affairs, Division of Real Estate Services, Chief, Branch of Technical Services, MS–4522/MIB/Code 220, 1849 C Street, N.W., Washington, D.C. 20240, telephone (202) 208–3604.

SUPPLEMENTARY INFORMATION: A proclamation was issued on May 8, 1996, according to the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), for the four tracts of land described below. The land was proclaimed to be an addition to and part of the Isabella Indian Reservation for the exclusive use of Indians on that reservation who are entitled to reside at the reservation by enrollment or tribal membership.

Isabella Reservation

Isabella County, Michigan

Parcel I

The South half of the Northeast Quarter (S½NE¼) of Section 20, Township 14 North, Range 3 West, EXCEPT a parcel described as beginning at a point on the East line, which is North 132 feet from the East Quarter (E¼) corner; thence continuing North 198 feet along said East line; thence North 89°55′ West 330 feet; thence South 198 feet; thence South 89°55′ East 330 feet to the point of beginning, and EXCEPT a parcel described as beginning at the East Quarter (E¼) corner of Section 20, Township 14 North, Range 3 West; thence North 132 feet; thence North 89°55′ West 330 feet; thence South 132 feet; thence South 89°55′ East 330 feet along the East and West Quarter

line to the point of beginning, containing 79 acres, more or less;

Parcel 2

The North three-eights (N3/8) of the Southeast Quarter (SE1/4), EXCEPT the South 340 feet of the East 270 feet of the North 60 acres of the North half of the Southeast Quarter (N1/2SE1/4) of Section 20, Township 14 North, Range 3 West, Chippewa Township, Isabella County, Michigan, and EXCEPT a parcel of land being a part of the Northeast Quarter of the Southeast Quarter (NE1/4SE1/4) of Section 20, Township 14 North, Range 3 West, Chippewa Township, Isabella County, Michigan, described as: Commencing at the East Quarter (E1/4) corner of said Section 20; thence South 154.76 feet along the East line of said Section 20 to the point of beginning; thence continuing South 490.00 feet along said East line; thence North 89°26′00″ West 535.00 feet; thence North 490.00 feet; thence South 89°26′00″ East 535.00 feet to the East line of said Section 20, which is the point of beginning and EXCEPT a parcel of land being part of the Northeast Quarter of the Southeast Quarter (NE1/4SE1/4) of Section 20, Township 14 North, Range 3 West, Chippewa Township, Isabella County, Michigan, described as: Commencing at the East Quarter (E1/4) corner of said Section 20; thence South 644.76 feet along the East line of said Section 20 to the point of beginning; thence continuing South 10.00 feet along said East line; thence North 89°26′00″ West 270.00 feet; thence South 340.00 feet; thence North 89°26′00″ West 121.00 feet; thence North 350.00 feet; thence South 89°26′00″ East 391.00 feet to the East line of said Section 20 which is the point of beginning. Containing 51 acres, more or less.

Parcel 3

A parcel of land being in the Northeast Quarter of the Southeast Quarter (NE1/4SE1/4) of Section 20, Township 14 North, Range 3 West, Township of Chippewa, Isabella County, Michigan, described as: Commencing at the East Quarter (E1/4) corner of said Section 20; thence South 154.76 feet along the East line of said Section 20 to the point of beginning; thence continuing South 490.00 feet along the East line; thence North 89°26′00″ West 535.00 feet; thence North 490.00 feet; thence South 89°26′00″ East 535.00 feet to the East line of said Section 20 which is the point of beginning. Containing 6 acres, more or less.

Parcel 4

The South Half of the Southwest Quarter (S1/2SW1/4) of Section 20, Township 14 North, Range 3 West, Township of Chippewa, Isabella County, Michigan, except a parcel of land commencing at the Southwest corner of said Section 20 which is the point of beginning; thence North 00°01′30″ East 690.00 feet along the West line of said Section 20; thence East 1,356.40 feet parallel with the South line of said Section 20 to the centerline of Miser Drain; thence South 15°00′00″ West 690.41 feet along the centerline of the Miser Drain; thence South 23.10 feet along the centerline of the Miser Drain to the South line of Section 20; thence West 1,178.10 feet along said South line to the point of beginning. Containing 60 acres, more or less.

Title to the land described above is conveyed subject to any valid existing easements for public roads, highways, public utilities, pipelines, and any other valid easements or rights-of-way now on record.

Dated: May 8, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–16001 Filed 6–21–96; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Land Management

[MT–960–1120–00]

Notice of Meeting

AGENCY: Bureau of Land Management (BLM), Montana, Miles City District, Interior.

ACTION: Notice of meeting.

SUMMARY: The Miles City District Resource Advisory Council will have a meeting Tuesday, July 23, 1996 at 10:00 a.m. in Room 172 of the Ponderosa Inn, 2511 First Ave. North, Billings, Montana. The meeting is called primarily to discuss off-highway vehicles, land exchanges, and block management and is expected to last until 5:00 p.m.

The meeting is open to the public and the public comment period is set for 4:00 p.m. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying during regular business hours.

FOR FURTHER INFORMATION CONTACT: Marilyn Krause, Public Affairs Specialist, Miles City District, 111 Garryowen Road, Miles City, Montana 59301, telephone (406) 232–4331.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management. The 15 member Council includes individuals who have expertise, education, training or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the Council.

Dated: June 14, 1996.

Glenn A. Carpenter,

District Manager.

[FR Doc. 96–15945 Filed 6–21–96; 8:45 am]

BILLING CODE 4310–DN–P

[NM–930–1310–01; NMNM 60584]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provision of Public Law 97–451; a petition for reinstatement of Oil and Gas Lease NMNM 60584, Lea County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from April 1, 1996, the date of termination. No valid lease has been issued affecting the land. The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, and 16⅔ percent, respectively. Payment of a $500.00 administration fee has been made. Having met all the requirements for reinstatement of the lease as set in Section 31(d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188(d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective April 1, 1996, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Becky C. Olivas, BLM, New Mexico State Office, (505) 438–7609.

Dated: June 13, 1996.

Becky C. Olivas,

Land Law Examiner.

[FR Doc. 96–15944 Filed 6–21–96; 8:45 am]

BILLING CODE 4310–FB–M

[UT–930–1220–01]

Supplementary Rules Concerning Alcoholic Beverages on Public Lands; Utah

AGENCY: Bureau of Land Management, DOI.

ACTION: Establishment of Supplementary Rules Concerning Alcoholic Beverages on Public Lands Within the State of Utah.

SUMMARY: Underage drinking is a growing problem on the public lands. Such activity poses a significant health and safety hazard to both underage violators and other users of the public lands and can result in the destruction of natural resources. This action will allow BLM officers to restrict the sale or supply of, and the unlawful purchase, possession and consumption of alcoholic beverages in a manner consistent with state law.

Unlawful Purchase, Possession, or Consumption by Minor—Misrepresentation of Age of Minor

(1) It is unlawful for any person under 21 years to purchase, possess or consume any alcoholic beverages or product, unless specifically authorized by this title.

(2) It is also unlawful for any person under the age of 21 to misrepresent their age, or for any other person to misrepresent the age of a minor, for the purpose of purchasing or otherwise obtaining an alcoholic beverage or product for a minor.

Sale or Supply of Alcoholic Beverages or Products to Minors Prohibited.

(1) No person shall sell, offer to sell, or otherwise furnish or supply any alcoholic beverage or products to any person under the age of 21 years.

(2) This section shall not apply to the furnishing or supplying of an alcoholic beverage or product to a minor for medicinal purposes by the parent or guardian of the minor or by the minor's physician or dentist, in accordance with this title.

Drinking Alcoholic Beverage and Open Containers in Motor Vehicle Prohibited—Definitions—Exceptions

(1) A person may not drink any alcoholic beverage while operating a motor vehicle or while a passenger in a motor vehicle, whether the vehicle is moving, stopped or parked on any highway.

(2) A person may not keep, carry, possess, transport or allow another to keep, carry, possess, or transport in the passenger compartment of a motor vehicle, when the vehicle is on the highway, any container which contains alcoholic beverage if the container has been opened, its seal broken, or the contents of the container partially consumed.

Definitions/Exceptions

Reference Definitions/Exceptions, 41–6–44.20.

Effect of and Obedience to Traffic Regulations

The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways, except:

(1) where a different place is specifically referred to in a given section: or

(2) under the provisions of Section 41–6–13.5 and Sections 41–6–29 to 41–6–45 inclusive, which apply upon highways and elsewhere throughout the state.

Penalties: As prescribed under Federal Land Policy and Management Act, 43 USC, Section 1733(a).

EFFECTIVE DATE: This restriction will go into effect June 24, 1996 and will remain in effect until rescinded or modified by the authorized officer.

FOR FURTHER INFORMATION CONTACT: State Special Agent in Charge, Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145, (801) 539–4011.

SUPPLEMENTARY INFORMATION: This supplementary restriction is issued under the Federal Land Policy and Management Act (FLPMA). Violation is punishable by fines and/or imprisonment under 43 CFR 8360.0–7. This restriction will go into effect upon publication in the Federal Register, and will remain in effect until rescinded or modified by the authorized officer. (Utah Codes: 32A–12–8, 32A–12–13, 41–6–44.20 and 41–6–11 (2) Effect of and Obedience to Traffic Regulations, Chapter relates to vehicles on highways (Exceptions).

Roger Zortman,

Acting State Director.

[FR Doc. 96–15941 Filed 6–21–96; 8:45 am]

BILLING CODE 4310–DQ–P

[UT–080–96–1110–08]

Notice of Intent To Amend Book Cliffs Resource Management Plan, Vernal District, Utah With Coordinated Resource Management Plan/ Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a coordinated resource management plan/ environmental assessment that will amend the Book Cliffs Resource Management Plan to include management of the area covered by the Book Cliffs Conservation Initiative, including recently acquired lands.

SUMMARY: This notice is intended to inform the public of an intent to prepare a coordinated resource management plan/environmental assessment (CRMP/EA) that addresses future management of lands within the Book Cliffs Initiative, including the lands acquired by the Bureau of Land Management (BLM), within the Book Cliffs area of the Vernal District for the purpose of amending the Book Cliffs Resource Management Plan (RMP). Public comment will be actively solicited throughout the CRMP/EA and amendment development processes.

SUPPLEMENTARY INFORMATION: In 1993 a partnership was formed between the Utah Division of Wildlife Resources (UDWR), The Nature Conservancy (TNC), the Rocky Mountain Elk Foundation (RMEF), and the BLM. The objective of such a partnership was to take advantage of existing opportunities to create a balanced approach to the management of unique natural resources within the upper portion of the East Tavaputs Plateau, in southeastern Uintah County, Utah. The partnership, entitled the Book Cliffs Conservation Initiative, deals with that portion of the Book Cliffs within the area between the Uintah-Ouray Indian Reservation trust lands to the west and the Utah-Colorado state line to the east, an area encompassing roughly 455,000 acres.

In 1993 and 1994, two private ranches then on the market within the Initiative area, were acquired by TNC and RMEF with the intent of vesting the title to either the State of Utah or the United States. In 1994, the BLM was vested with title to 5,129 acres, about 53%, of these acquired lands. As public lands administered by the BLM, future management of these lands must be developed and incorporated into the existing Book Cliffs RMP. The CRMP/EA/RMPA will be developed by the BLM in concert with the UDWR, other State and Federal agencies, Uintah County, local government entities, and the general public. At this time general planning issues to be addressed include:

1. Maintain a sustained balance of forage between livestock and wildlife.

2. Define and develop a future forage allocation process that will achieve wildlife, watershed, and riparian goals using the existing grazing authorizations as a starting point. Also address management of wild horses.

3. Increase recreation opportunity through access management and route designation.

4. Improve the vegetative communities in the canyon bottoms and on critical big game winter range.

5. Develop desired standards for other vegetative communities within the Initiative area.

6. Allow increased wildlife diversity.

7. Maintain a primitive development philosophy, particularly as it relates to recreation.

The CRMP/EA/RMPA will be prepared under 43 CFR part 1610 to meet the requirements of section 202 of the Federal Land Policy and Management Act, and section 102 of the National Environmental Policy Act. This revision is necessary to update and expand the decisions in the existing land use plan. Decisions generated during this planning process will supersede affected land use planning decisions presented in the 1985 Book Cliffs RMP that affect lands within the Initiative area.

Public participation is being actively sought at this time to ensure the EA addresses all issues, problems, and concerns from those interested in the management of the public lands within the Book Cliffs Initiative Area, including the acquired lands. The development of the CRMP/EA/RMPA is a public process and the public is invited and encouraged to assist in the identification of issues and the scope of the EA and planning amendment. Public meetings will be held to discuss planning issues. The date, time and location of these scoping meetings are: July 30, 1996, 7:00 p.m. to 9:00 p.m., at the John Wesley Powell Museum at Green River, Utah; July 31, 1996, 7:00 p.m. to 9:00 p.m., at the Utah State University Extension Building, Room 207–B at Vernal, Utah; and August 1, 1996, 7:00 p.m. at the Department of Natural Resources Conference Room at 1594 West North Temple, Salt Lake City, Utah. These meetings also will be announced in local newspapers and through other local media.

Formal public participation will be requested for review of the preliminary CRMP/EA/RMPA and final CRMP/EA/RMPA in 1997. Notice of availability of these documents will be published at the appropriate times.

The CRMP/EA/RMPA will be prepared by an interdisciplinary team which includes specialists in rangeland vegetation, riparian values, cultural resources, recreation, wildlife/fisheries habitats, realty, and special status animal and plant species. Other disciplines may be represented as necessary.

FOR FURTHER INFORMATION CONTACT: Paul Andrews, Assistant Field Office Manager for Renewable Resources, Vernal Office, 170 South, 500 East, Vernal, Utah 84078. Business hours are from 7:45 a.m. to 4:30 p.m., Monday through Friday, except legal holidays, telephone (801) 789–1362 or 781–4470, fax (801) 781–4410.

Roger Zortman,

Acting State Director, Utah.

[FR Doc. 96–15939 Filed 6–21–96; 8:45 am]

BILLING CODE 4310–DQ–P

[UT–020–06–1430–00]

Pony Express Resource Area, UT; Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to amend a resource management plan.

SUMMARY: The Bureau of Land Management (BLM) is preparing an Environmental Assessment (EA), to consider a proposed amendment to the Pony Express Resource Management Plan (RMP). The proposed amendment would consider alternatives for management of acquired lands in Tooele County.

DATES: The comment period for identification of issues for the proposed plan amendment will commence with the date of publication of this notice. Comments must be submitted on or before July 29, 1996.

FOR FURTHER INFORMATION CONTACT: Mike Nelson, Realty Specialist, Bureau of Land Management, Salt Lake District, 2370 South 2300 West, Salt Lake City, UT 84119, telephone (801) 977–4355. Existing planning documents and information are available at the above address or telephone number. Comments on the proposed plan amendment should be sent to the above address.

SUPPLEMENTARY INFORMATION: The Salt Lake District, BLM, is proposing to amend the Pony Express RMP, to identify and analyze management prescriptions for lands in the Oquirrh Mountain Range that have been recently acquired by the BLM. An EA will be prepared to analyze the impacts of this proposal and alternatives. Public participation is being sought at this initial stage in the planning process to ensure the RMP amendment addresses all issues, problems and concerns from those interested in the management of lands within the Salt Lake District. Necessary amendments to the approved plan will keep the document current and viable.

Roger Zortman,

Acting State Director.

[FR Doc. 96–15940 Filed 6–21–96; 8:45 am]

BILLING CODE 4310–DQ–M

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collections of information for 30 CFR part 800.

DATES: Comments on the proposed information collection must be received by August 23, 1996, to be assured of consideration.

ADDRESSES: Comments may be mailed to Dennis Rice, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 120–SIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact Dennis Rice, at (202) 208–2829.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d)). This notice identifies information collections that OSM will be submitting to OMB for extension. This collection is contained in 30 CFR part 800, Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the

agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will be included in OSM's submissions of the information collection requests to OMB.

The following information is provided for the information collections: (1) Title of the information collections; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs—30 CFR 800.

OMB Control Number: 1029–0043.

Summary: The regulations at 30 CFR part 800 primarily implement Section 509 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), which requires that persons planning to conduct surface coal mining operations first post a performance bond to guarantee fulfillment of all reclamation obligations under the approved permit. The regulations also establish bond release requirements and procedures consistent with § 519 of the Act, liability insurance requirements pursuant to § 507(f) of the Act, and procedures for bond forfeiture should the permittee default on reclamation obligations.

Bureau Form Number: None.

Frequency of Collection: On Occasion.

Description of Respondents: Surface coal mining and reclamation permittees and State regulatory authorities.

Total Annual Responses: 19,398.

Total Annual Burden Hours: 174,692 hours.

Dated: June 18, 1996.

Gene E. Krueger,

Acting Chief, Office of Technology Development and Transfer.

[FR Doc. 96–16004 Filed 6–21–96; 8:45 am]

BILLING CODE 4310–05–M

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for the title described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: Comments must be submitted on or before July 24, 1996 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted a request to OMB to renew its approval of the collection of information found at 30 CFR 780, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plans. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is listed in 30 CFR Part 780, which is 1029–0036.

As required under 5 CFR 1320.8(d), a Federal Register notice soliciting comments on these collections of information was published on April 2, 1996 (61 FR 14579). No comments were received. This notice provides the public with an additional 30 days in which to comment.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information. Where appropriate, OSM has revised burden estimates to reflect current reporting levels, adjustments based on reestimates of the burden or number of respondents, and programmatic changes.

Title: Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plans.

OMB Control Number: 1029–0036.

Summary: Permit application requirements in sections 507(b), 508(a), 510(b), 515 (b), and (d), and 522 of Public Law 95–87 require the applicant to submit the operations and reclamation plan for coal mining activities. Information collection is needed to determine whether the mining and reclamation plan will achieve the reclamation and environmental protections pursuant to the Surface Mining Control and Reclamation Act. Without this information, Federal and State regulatory authorities cannot review and approve permit application requests.

Frequency of Collection: On occasion.

Description of Respondents: Applicants for surface coal mine permits.

Total Annual Responses: 610 responses.

Total Annual Burden Hours: 235,261 hours.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503.

Dated: June 14, 1996.

Gene E. Krueger,

Acting Chief, Office of Technology Development and Transfer.

[FR Doc. 96–16005 Filed 6–21–96; 8:45 am]

BILLING CODE 4310–05–M

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for the title described below has been

forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: Comments must be submitted on or before July 24, 1996 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted a request to OMB to renew its approval of the collection of information found at 30 CFR 955, Certification of Blasters in Federal program States and on Indian lands, and OSM use of the form OSM–74. OSM will request a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is listed in 30 CFR Part 955 and on the form OSM–74.

As required under 5 CFR 1320.8(d), a Federal Register notice soliciting comments on these collections of information was published on March 20, 1996 (61 FR 11429). No comments were received. This notice provides the public with an additional 30 days in which to comment.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information. Where appropriate, OSM has revised burden estimates to reflect current reporting levels, adjustments based on reestimates of the burden or number of respondents, and programmatic changes.

Title: Certification of blasters in Federal program States and on Indian lands.

OMB Control Number: 1029–0083.

Summary: This information is being collected to ensure that the qualification of applicants for blaster certification is adequate. This information will be used to determine the eligibility of the applicant. The affected public will be blasters who want to be certified by the Office of Surface Mining Reclamation and Enforcement.

Bureau Form Number: OSM–74.

Frequency of Collection: On occasion.

Description of Respondents: Individuals intent on being certified as blasters in Federal program States and on Indian lands.

Total Annual Responses: 55 responses.

Burden per Respondent: 40 minutes.

Total Annual Burden Hours: 35 hours.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following addresses. Please refer to the appropriate OMB control number in all correspondence.

ADDRESSES: John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 120—SIB, Washington, DC 20240.

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503.

Dated: June 17, 1996.

Gene E. Krueger,

Acting Chief, Office of Technology Development and Transfer.

[FR Doc. 96–16006 Filed 6–21–96; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to 28 CFR 50.7

Notice is hereby given that a proposed consent decree in *United States of America* v. *Blue Grass Chemical Specialities, L.P. and Blue Grass Holding Corp.*, Civil Action No. NA 96–31–C D/H, was lodged on June 5, 1996 with the United States District Court for the Southern District of Indiana. The proposed consent decree resolves the United States' claims against Blue Grass Chemical Specialists, L.P. for violations of pretreatment standards enforceable under the Clean Water Act at its organic chemicals manufacturing facility located in New Albany, Indiana. In the proposed settlement Blue Grass Chemical Specialties, L.P. agrees to: continue in complete compliance with federal and local pretreatment standards and pay a civil penalty of $110,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division of Justice, Washington, DC 20530, and should refer to *United States of America* v. *Blue Grass Chemical Specialties, L.P. and Blue Grass Holding Corp.*, DOJ Ref. #90–1–1–4214.

The proposed consent decree may be examined at the office of the United States Attorney, 204 South Main Street, South Bend, Indiana 46601–2191; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–15946 Filed 6–21–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 3, 1996, a proposed Consent Decree in *United States* v. *CPF, Inc.*, Civil Action No. 96–11141–REK, was lodged with the United States District Court for the District of Massachusetts resolving the matters alleged in a complaint filed simultaneously with the Consent Decree. The proposed Consent Decree concerns violations by CPF of the Clean Water Act (''CWA''), 33 U.S.C. §§ 1251, *et seq.*, at CPF's beverage bottling facility in Ayer, Massachusetts. The CWA violations alleged in the complaint include discharges of pollutants in excess of local

pretreatment standards pursuant to section 307 (b) and (d) of the Act, 33 U.S.C. § 1317 (b) and (d), and failure to comply with local monitoring and reporting requirements.

Under the terms of the Consent Decree, the defendant will pay a civil penalty of $160,786 to the United States. In addition, CPF will be required to comply with applicable pretreatment standards, as well as comply with monitoring, sampling, and reporting requirements. The monitoring requirements include a program of gathering water quality data in the Nashua River watershed. CPF will also be required to perform four supplemental environmental projects, consisting of the acquisition and transfer to the Commonwealth of Massachusetts of certain conservation land, the performance of two storm drain stenciling programs, and the performance of a riverbank stabilization project, all at an estimated cost to CPF of $99,625.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *CPF, Inc.*, Civil Action No. 96–11141–REK (D. Mass.) DOJ #90–5–1–1–4292.

The proposed Consent Decree may be examined at the Region 1 Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts; at the office of the United States Attorney, District of Massachusetts, 1003 J.W. McCormack P.O. & Courthouse, Boston, MA 02109, c/o George B. Henderson, II, Assistant U.S. Attorney; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $5.25 for the Consent Decree without attachments or $9.00 for the Consent Decree with attachments (25 cents per page reproduction cost) made payable to Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–15951 Filed 6–21–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given of four consent decrees lodged on May 23, 1996. A separate consent decree was lodged in each of the following related cases: (a) *United States of America* v. *Iroquois Pipeline Operating Company*, Civ. Act. No. 96–CV–836 FJS (N.D.N.Y.); (b) *United States of America* v. *Iroquois Pipeline Operating Company*, Civ. Act. No. CV 96 2613 (E.D.N.Y.); (c) *United States of America* v. *Iroquois Pipeline Operating Company*, Civ. Act. No. CV 3906 (CLB) (S.D.N.Y.); and (d) *United States of America* v. *Iroquois Pipeline Operating Company*, Civ. Act. No. CV 396CV00926 (RNC). The proposed decrees concern alleged violations of Sections 301 and 404 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1344, as the result of the defendant's violation of U.S. Army Corps of Engineers (''Corps'') Permit No. 16013, issued on February 12, 1991, in connection with construction of the Iroquois natural gas pipeline (''Pipeline'').

Pursuant to each of the consent decrees, Iroquois Pipeline Operating Company and Iroquois Gas Transmission System, LP (an entity related to defendant Iroquois Pipeline Operating Company which is not a defendant in the complaints associated with the consent decrees, but which is a signatory to the consent decrees) (collectively, ''Iroquois''), are (a) Permanently enjoined from violating Sections 301(a) and 404 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1344; (b) required to comply with a Constant Order issued by the United States Department of Transportation, which mandates the performance of an ''Integrity Monitoring and Maintenance Plan'' relating to the Pipeline by defendant; (c) required to implement a Backfill Stability Monitoring and Maintenance Plan relating to the Pipeline; (d) required to pay a civil penalty of $2.25 million pursuant to 33 U.S.C. §§ 1319(d) and 1344(s); and (e) required to pay $2.25 million to the National Fish and Wildlife Foundation as a supplemental environmental project for the creation, restoration, enhancement and acquisition of wetlands and adjoining uplands in the vicinity of the Pipeline right-of-way. Iroquois will be making one $2.25 million civil penalty payment and one $2.25 million payment for the supplemental environmental project in fulfillment of its obligations under all four consent decrees. Pursuant to the consent decree lodged in the United States District Court for the Northern District of New York, Iroquois will also be required to remove unauthorized fill and restore wetlands under the supervision of the Corps.

The Department of Justice will receive written comments on these consent decrees for a period of thirty (30) days from the date of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Daniel W. Pinkston, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026–3986, and should refer to *United States* v. *Iroquois Pipeline Operating Company*, DJ Reference No. 90–5–1–1–3883.

The proposed consent decrees may be examined at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy of the consent decrees with attachments, please enclose a check in the amount of $22.50 for a copy of the Northern District of New York consent decree; $23.00 for a copy of the Eastern District consent decree; $22.75 for a copy of the Southern District consent decree; and $22.50 for the District of Connecticut consent decree. In addition to the Consent Decree Library, the consent decree for a particular district may be examined at the following locations: (a) Northern District of New York—Offices of the United States Attorney for the Northern District of New York, James Foley Building, Room 231, Albany, New York; (b) Eastern District of New York—Offices of the United States Attorney for the Eastern District of New York, One Pierrepont Plaza, 14th Floor, Brooklyn, New York; (c) Southern District of New York—Offices of the United States Attorney for the Southern District of New York, 100 Church Street, 19th Floor, New York, New York; and (d) District of Connecticut—Office of the Clerk of the United States District Court for the District of Connecticut, 450 Main Street, Hartford, Connecticut.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 96–15947 Filed 6–21–96; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—U.S. Department of Commerce Advanced Technology Program (ATP)/National Institute of Standards and Technology (NIST) Project No. 94–02–0048 ''Manufacturing Composite Structures for the Offshore Oil Industry''

Notice is hereby given that, on May 28, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* (''the Act''), the participants in the ATP/NIST Project No. 94–02–0048 have filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing a change in project membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Northrup Grumman Corporation, Sunnyvale, CA, has become a participant in the Project; and Westinghouse Electric Corporation has terminated its membership.

No other changes have been made in either the membership or the planned activities of the Project.

On March 17, 1995, ATP/NIST Project No. 94–02–0048 filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on April 27, 1995 (60 FR 20750).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–15949 Filed 6–21–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Perceptual-Based Video Encoding and Quality Measurement

Notice is hereby given that, on April 24, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the David Sarnoff Research Center has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: Texas Instruments Incorporated, Dallas, TX, replaces LSI Logic Corporation and Bell Atlantic Network Services changed location from Arlington, VA to Washington, DC.

No other changes have been made in either the membership or the planned activities of the project. Membership in the project remains open, and the parties intend to file additional written notifications disclosing all changes in the membership.

On September 1, 1995, David Sarnoff Research Center filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on December 4, 1995, 60 FR 62109.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–15948 Filed 6–21–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum Project No. 95–07

Notice is hereby given that, on May 29, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petroleum Environmental Research Form (''PERF'') Project No. 95–07, titled ''Mechanical Properties of Aging Refining Hydroprocessing Reactors'', has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of he venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identifies of the parties are: Arco Products Co., Anaheim, CA; Chevron Research and Technology Company, Richmond, CA; Amoco Corp., Texas City, TX; Creusol-Loire Industrie, 71202 Le Creusot Cedex, FRANCE; Japan Steel Works Ltd., Yurakucho 1-Chome Chiyodaku, Tokyo, JAPAN; Mobil Technology Co., Paulsboro, NJ; UOP, Inc., Des Plaines, IL; Exxon Research and Engineering Co., Florham Park, NJ; Kobe Steel, Ltd., Takassago-shi, Hyogo-ken, JAPAN; and Shell Oil Products Co., Houston, TX. Research and development work required in furtherance of the project is to be carried out by one or more of the Participants. The nature and objective of this project is to review existing data on feature toughness and crack growth rate of reactor materials and obtain new data by collecting and testing samples of retired reactors to advance the understanding of cracking and fracture mechanisms of reactor materials and the fitness for service of aging 2¼ Cr–1Mo and 3 Cr–1Mo heavy wall refining hydroprocessing reactors.

Participation in this project will remain open to interested persons and organizations until the project completion date, which is presently anticipated to occur approximately December 15, 1998, but no later than December 31, 1998. The participants intend to file additional written notifications disclosing all changes in its membership. Information regarding participation in the project maybe obtained from Jack L. Pease, Chevron Research and Technology Co., 100 Chevron Way, Richmond, CA 94802–1627, telephone (510) 242–2771, Fax (510) 242–7222.

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 96–15950 Filed 6–21–96; 8:45 am]

BILLING CODE 4410–01–M

National Institute of Justice

[OJP (NIJ) No.1087]

RIN 1121–ZA39

National Institute of Justice Solicitation ''Law Enforcement Family Support: Solicitation for Demonstration and Training Programs for Reducing Stress Among Law Enforcement Officers and Their Families''

AGENCY: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

ACTION: Announcement of the availability of the National Institute of Justice Solicitation ''Law Enforcement Family Support: Solicitation for Demonstration and Training Programs for Reducing Stress Among Law Enforcement Officers and Their Families.''

DATES: The deadline for receipt of proposals is close of business on August 6, 1996.

ADDRESSES: National Institute of Justice, 633 Indiana Avenue, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Tawana Waugh, U.S. Department of Justice Response Center, at 800–421–6770 (in Metropolitan Washington, DC, 202–307–1480).

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1988).

Background

Title XXI of the Violent Crime Control and Law Enforcement Act of 1994 establishes a Law Enforcement Family Support Program, in recognition of the negative effects of job related stress on law enforcement personnel and their families. The program authorizes the Attorney General to support research on the effects of stress on law enforcement personnel and their families, identify and evaluate programs providing support services to law enforcement personnel and their families, and provide technical assistance and training for stress reduction and family support programs.

This solicitation seeks proposals for the development, demonstration, and assessment of innovative stress reduction programs for State or local law enforcement personnel and their families; and for the development and delivery of training on how to plan, implement, and manage stress reduction and family support programs and services.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''Law Enforcement Family Support: Solicitation for Demonstration and Training Programs for Reducing Stress Among Law Enforcement Officers and Their Families'' (refer to document no. SL000154). The solicitation is available electronically via the NCJRS Bulletin Board, which can be accessed via Internet. Telnet to ncjrsbbs.ncjrs.org, or gopher to ncjrs.org:71. For World Wide Web access, connect to the NCJRS Justice Information Center at http://www.ncjrs.org. Those without Internet access can dial the NCJRS Bulletin Board via modem: dial 301–738–8895. Set modem at 9600 baud, 8–N–1.

Jeremy Travis,

Director National Institute of Justice.

[FR Doc. 96–15938 Filed 6–21–96; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Period for Puerto Rico

This notice announces a change in benefit period eligibility under the EB Program for Puerto Rico.

Summary

The following change has occurred since the publication of the last notice regarding States' EB status:

- May 5, 1996—Puerto Rico triggered ''on'' EB. Puerto Rico's 13-week insured unemployment rate had been above the 6.0 percent threshold necessary to be trigger ''on'' to EB since the week of March 9, 1996. However, Section 203(b)(1)(B) of the Federal-State Extended Unemployment Compensation Act of 1970 specifies that no extended benefit period may begin for a State before the fourteenth week after the close of the States' most recent extended benefit period. Puerto Rico's previous extended benefit period ended February 3, 1996 and the fourteenth week following the end of that extended benefit period is the week beginning May 5, 1996.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the States by the U.S. Department of Labor. In the case of a State beginning an EB period, the State employment security agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for extended benefits (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB benefits, or who wish to inquire about their rights under the programs, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC, on June 19, 1996.

Timothy M. Barnicle,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 96–16030 Filed 6–21–96; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL INSTITUTE FOR LITERACY

Agency Information Collection Activities Under OMB Review

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces an Information Collection Request (ICR) by the NIFL. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 24, 1996.

FOR FURTHER INFORMATION CONTACT: Jaleh Behroozi Soroui at (202) 632–1506 or e-mail: Jaleh@nifl.gov.

SUPPLEMENTARY INFORMATION:

Title

Application for Technology Award to Governors' State Literacy Resource Centers to build a national electronic information and communication network for literacy by establishing regional hubs on the Internet in Region I designated by the Department of Education's Office of Vocational and Adult Education.

Abstract

The National Literacy Act of 1991 established the National Institute for Literacy and required that the Institute conduct basic and applied research and demonstrations on literacy; collect and disseminate information to Federal, State and local entities with respect to literacy; and improve and expand the system for delivery of literacy services. This form will be used by State Governors' State Literacy Resource Centers to apply for funding to create regional electronic information and communication hubs for literacy that will build technological capacity for electronic exchange across the literacy community. Evaluations to determine successful applicants will be made by a panel of literacy experts using the published criteria. The Institute will use this information to make a maximum of one cooperative agreement award for a period of up to 2 years.

Burden Statement: The burden for this collection of information is estimated at 55 hours per response. This estimate includes the time needed to review instructions, complete the form, and review the collection of information.

Respondents: Governors of States in Region I and Trust Territories.

Estimated Number of Respondents: 5.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 275 hours.

Frequency of Collection: One time. Send comments regarding the burden estimate or any other aspect of information collection, including suggestions for reducing the burden to: Jaleh Behroozi Soroui, National Institute for Literacy, 800 Connecticut Ave., NW, Suite 200, Washington, DC 20006, and Wendy Taylor, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW, Washington, DC 20503.

Carolyn Staley,

Deputy Director, NIFL.

[FR Doc. 96–16083 Filed 6–21–96; 8:45 am]

BILLING CODE 6055–01–M

NUCLEAR REGULATORY COMMISSION

[Docket 40–7580]

Finding of No Significant Impact and Notice of Opportunity for a Hearing; Amendment of Source Materials License SMB–911 Fansteel, Inc., Muskogee, Oklahoma

The U.S. Nuclear Regulatory Commission is considering the amendment of Source Materials License SMB–911 for the recovery of Work in Progress (WIP) pond residues at the Fansteel, Inc., plant located in Muskogee, Oklahoma. The amendment will allow the facility to process on-site pond residues to recover rare earth metals and to reduce the volume of on-site radioactive materials. The Commission has determined not to prepare an environmental impact statement for the proposed action, because the amendment will not have a significant effect on the quality of the human environment for reasons described in the Environmental Assessment.

Summary of the Environmental Assessment

Background

Fansteel, Inc. (Fansteel) has been licensed by the Nuclear Regulatory Commission (NRC) to possess and use source materials at the Muskogee plant since January 1967. The current license expired in July 1994; however, Fansteel submitted a renewal application on June 20, 1994. In accordance with the timely renewal provision of 10 CFR 40.43(b), the existing license continues to be effective until the application for renewal has been finally determined by the Commission. The NRC plans to complete the renewal action on Fansteel's license, including an Environmental Assessment, after action on this amendment application is completed.

Fansteel, Inc. had previously processed ore concentrates and tin slags in the production of refined tantalum products at their Muskogee site. A residue containing natural uranium and thorium was generated as a result of the initial hydrofluoric acid digestion of the ore concentrates. This residue is considered source material, and is regulated under the Atomic Energy Act of 1954 and defined in 10 CFR Part 40, because it contains more than 0.05% by weight of uranium and thorium. Since significant quantities of tantalum remained in the residue after initial extraction, as well as other rare earth elements and fluoride, the residues were designated by Fansteel as WIP material suitable for secondary processing. Approximately 9,000 dry tons of WIP material have accumulated in ponds numbered 2, 3, and 5.

Identification of the Proposed Action

The proposed action is to amend the Source Materials License SMB–911 to allow Fansteel to retrieve and process WIP material from the on-site ponds. The WIP process will isolate the radioactivity such that the bulk of the WIP material can be used commercially while minimizing the volume of material sent for radioactive waste disposal.

Processing of the WIP material will recover tantalum, columbium (niobium), and scandium from the pond residues. This WIP material recovery will be achieved by a series of proprietary chemical processes to separate the remaining tantalum, columbium, and scandium from the residues. Uranium and thorium will be separated from the other products as uranium and thorium hydroxides. Waste materials from this process contaminated with natural uranium and thorium will be packaged and stored for offsite disposal.

The Need for the Proposed Action

The current license allows Fansteel to possess, use, store, and transfer natural uranium and thorium and their progenies in metal processing residues. The license allows the possession of a maximum of 30,000 kilograms of uranium and 67,000 kilograms of thorium in solid forms as oxides in tin slag and ore processing residues. The license amendment is needed to allow Fansteel to process the pond residues.

Environmental Impacts of the Proposed Action

Treatment of pond residues will result in effluents of radioactive materials to air and water from the Fansteel plant, which may produce a small increase in radiation doses to the public.

The WIP process will generate gases and particulates that will be captured in a centrifugal particulate separator followed by water and caustic scrubbing before discharge to the atmosphere. The treated stack effluent will be continuously monitored for gross alpha radioactivity.

Liquid effluents will be collected and treated with lime, then pumped to Ponds 8 and 9 for settling prior to discharge through Outfall 001.

The estimated total effective dose equivalent from inhalation of radionuclides emitted during WIP processing is less than 1 millirem per year to a hypothetical resident located at the site boundary in the most frequent downwind direction. The proposed amendment will not have an adverse impact on the air quality for the region beyond the contribution from currently licensed activities.

Treated wastewater will be discharged through Outfall 001 to the Arkansas River. Ingestion of water discharged to the Arkansas River would result in doses much less than 5 millirem per year, due to the low concentration of radionuclides in the discharge. Actual dose would be much less, because the effluent, approximately 100,000 gallons per day, is further diluted by the Arkansas River flow of 20,600 cubic feet per second (13 billion gallons per day).

By comparison, the total body dose rate to an individual in the vicinity of the Muskogee plant from background sources has been estimated at 107 millirems per year, not considering fallout radiation sources or radon, including 43.4 mrem/yr from cosmic rays, 45.6 mrem/yr from terrestrial sources, and 18 mrem/yr from internal emitters.

Background uranium concentrations in soil are typically 1.0 to 1.5 micrograms per gram, which is equivalent to 0.33 to 0.50 picocuries per gram. The WIP processing is not expected to result in an increase in soil radioactivity, because no radioactive materials will be released to soils during processing.

The proposed license amendment will not have an adverse impact on surface or ground water quality. In fact, there is expected to be a potential benefit, since the removal of source material in the ponds will reduce the potential for ground water and surface water

contamination in the future. Remediation of past ground water contamination from a pond leak in 1989 will continue under the provisions of the renewed license.

The proposed license amendment will not result in any adverse environmental impacts which could affect terrestrial and aquatic biota.

Accidents

The Environmental Report considered the potential for accidents at the Muskogee plant. Material which could leak from tanks, pumps, or pipes would be confined within the dissolution building. Pipe leaks could lead to slurry's being leaked onto the ground surface. Such accidents would be readily identified and cleaned up and would represent no significant radiological impacts. Process chemicals, including hydrochloric acid, sodium hydroxide, sulfuric acid, and potassium hydroxide, are stored in tanks within diked areas to contain any leaks.

Transportation accidents represent a low radiological risk because outgoing shipments of radioactive waste will be packaged in drums or bags and transported in accordance with the U.S. Department of Transportation (DOT) regulations. Transportation accidents could result in spilled radioactive material that is readily cleaned up. Furthermore, the low-activity materials that will be produced by the WIP process do not represent a significant hazard during transport.

For soil or liquid transport, the accidental release of stored WIP was considered worst case because of its associated radioactivity. Rather than attempt to quantify this potential exposure, it was assumed that its transport off-site via the river posed an unacceptable risk to the public. The existing drainage and sump systems for the Chem A and Chem C process buildings have thus been incorporated into the existing WIP process design. The sump system includes a sump capable of holding more than the total quantity of WIP that will be present in the building at any given time. This system has sufficient capacity to preclude any transport of liquids or slurries away from the immediate process areas.

Transportation of nonradioactive industrial chemicals represents an accident risk; however, these shipments do not pose any unique transportation hazards beyond those associated with nonnuclear facilities using similar chemicals. All shipments of industrial chemicals to the Muskogee plant will be transported in accordance with U.S. DOT and state and local laws.

Natural phenomena, such as tornadoes, earthquakes, flooding, and fire, have also been considered. The probability of a tornado striking the plant is 1.8×10^{-3} per year; this could result in dispersion of material from the drum storage area, the milling room, the waste holding ponds, and the digestion building. The Fansteel plant is located in a quiet seismic region considered to be of minor seismic risk. The site is located above the Arkansas River floodplain. Fansteel will describe how it intends to address NRC guidance with respect to fire prevention, detection, and suppression prior to startup of the WIP processing facility.

Monitoring Programs

Monitoring programs have been developed to assure that there will not be any undetected release of radioactivity from the Fansteel site during the recovery and processing of WIP material.

Gases from the calciner in building Chem A will be exhausted through a common duct into a wet scrubber that exhausts through a vertical stack to the atmosphere. The stack is equipped with a continuous radiation monitor. The process ventilation systems and gaseous effluent control equipment are designed and will be operated in accordance with the standard engineering practice. Operational checks on these systems will be performed as part of the standard operating procedures. Stack emissions will be controlled and sampled on a 24-hour basis when operating.

Atmospheric effluents will be controlled through the use of wet scrubbers. Scrubber liquids will be treated through the wastewater treatment system, with the ground water collection system, laboratory, deionized water, and chemical processing wastewaters, and discharged to the Arkansas River through Outfall 001. Gross α and gross β analyses are performed on a continuous water sample at the effluent monitoring station when the station is in operation. This outfall is also monitored for nonradiological parameters in accordance with the NPDES permit.

Fansteel also monitors 25 ground water wells; depth, pH, fluoride, ammonia, total dissolved solids, specific conductivity, and gross α and gross β are measured monthly. This data is recorded and maintained as permanent records.

Fansteel has committed to take certain actions if specified radioactivity concentrations (action levels) for the Outfall 001 effluent and ground water analyses are exceeded. These action levels are related to EPA drinking water standards for radionuclides in 40 CFR Part 141 and to NRC effluent limits in 10 CFR Part 20.

Alternatives to the Proposed Action

If the license amendment application is denied, Fansteel will be prohibited from processing the pond residues, and will be required to decommission the plant site without recovering the metals and rare earth elements. This would require treatment and/or disposal of large quantities of process residues. Such a denial would likely result in either removal of the pond residues and disposal in a low-level radioactive waste disposal facility or onsite disposal of the residues.

Agencies and Persons Consulted

The Oklahoma Department of Environmental Quality, Hazards Management and Waste Services, Radiation Control Program, Water Quality Division.

Conclusion

The NRC has determined that issuance of the amendment to allow Fansteel to process the pond residues will not result in a significant impact to human health and the environment.

Finding of No Significant Impact

The NRC has prepared an Environmental Assessment related to the amendment of Source Materials License SMB–911. On the basis of this assessment, NRC has concluded that environmental impacts that would be created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a finding of no significant impact is appropriate.

The Environmental Assessment, the license amendment application, and other documents related to this proposed action are available for public inspection and copying at the Commission's public document room in NRC's Region IV office, Harris Tower, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011–8064, and in NRC's headquarters public document room, Gelman Building, 2120 L St., NW., Washington, DC 20037.

Opportunity for a Hearing

Any person whose interest may be affected by the amendment of this license may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days

of the publication of this notice in the Federal Register; must be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852) and on the licensee (Fansteel, Inc., Number Ten Tantalum Place, Muskogee, OK 74401); and must comply with the requirements for requesting a hearing set forth in the Commission's regulation 10 CFR Part 2, Subpart L, ''Informal Hearings Procedures for Adjudications in Materials Licensing Proceedings.''

These requirements, which the requestor must address in detail, are:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;

3. The requestor's area of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (e.g., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 17th day of June 1996.

For the Nuclear Regulatory Commission.

Robert C. Pierson,

Chief, Licensing Branch, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 96–15989 Filed 6–21–96; 8:45 am]

BILLING CODE 7590–01–P

Docket Nos. 50–272 and 50–311]

Public Service Electric and Gas Company; Notice of Consideration of Issuance of Amendment To Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–70 and DPR–75 issued to Public Service Electric & Gas Company (the licensee) for operation of Salem Nuclear Generating Station, Units 1 and 2, located in Salem County, New Jersey.

The proposed amendments would revise Technical Specification 3/4.7.6, ''Control Room Emergency Air Conditioning System [CREACS],'' to reflect a control room design in which the common Salem Unit 1 and Unit 2 control room envelope is supplied by 2 one-hundred percent capable Control Room Emergency Air Conditioning System trains.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

CREACS ensures adequate protection after an accident and is not an accident initiator. The changes to the emergency operating mode and configuration of the CREACS, while modifying the control room dose assessment, do not affect the probability of an accident.

The proposed operation of the CREACS in the pressurization mode at the initiation of an accident will reduce overall operator doses from such an event and will ensure that the requirements of General Design Criterion (GDC) 19 will be met. Operation in the recirculation mode to mitigate the consequences of a fire or a toxic release, if necessary, or as a compensatory measure when receiving ammonium hydroxide does not significantly increase the consequences of other accidents due to the short duration of these events, the ability to re-align the system to the pressurization mode manually, and the suspension of Core Alterations or fuel movement.

The CREACS as modified satisfies [technical specification] TS Bases 3.7.6. The CREACS ensures that (1) the ambient air temperature does not exceed the allowable temperature for continuous duty rating for equipment and instrumentation cooled by the CREACS and (2) the Control Room will remain habitable for operations personnel during and following all credible accident conditions.

The proposed changes reflect the commonality of the Salem Unit 1 and Unit 2 [common room envelope] CRE and the supporting CREACS trains by adopting the guidance for required actions, allowed outage times, and testing provided in the [Standard Technical Specification] STS.

Therefore, the proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The establishment of the CREACS as a shared system for both Units 1 and 2 will not result in a new accident release scenario. The upgraded CREACS reflected by this submittal revises the emergency operating mode from the original recirculation mode to a pressurization mode in the event of a radiological emergency. This change in CREACS operating philosophy is in support of compliance with the limits of GDC 19. Modifications to the Salem control rooms regarding the controlled atmospheric boundary configuration and how the configuration is maintained cannot result in new accident scenarios.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes support modifications to the CREACS as part of corrective actions identified in Licensee Event Reports with the intent of compliance with General Design Criterion 19 limits. The changes do no[t] impact the existing safety analyses while retaining and meeting current requirements and General Design Criteria limitations and gaining a redundancy in the affected system. The modified CREACS meets the TS Bases 3.7.6 requirements. CREACS ensures that (1) the ambient air temperature does not exceed the allowable temperature for continuous duty rating for equipment and instrumentation cooled by the CREACS and (2) the Control Room will remain habitable for operations personnel during and following all credible accident conditions. This clarification of the CREACS operability requirements and the application of more conservative requirements to Unit 1 will result in a net increase to operator safety.

Therefore, the proposed TS change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of

publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 24, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests

for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 10, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey.

Dated at Rockville, Maryland, this 18th day of June 1996.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–15988 Filed 6–21–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–37313; File No. SR–CBOE–96–30]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Its Retail Automatic Execution System Participation Requirements in OEX Options

June 14, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 9, 1996, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange submitted to the Commission Amendment No. 1 on June 12, 1996.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules respecting eligibility to participate in the CBOE's Retail Automatic Execution System (''RAES'') for transactions in Standard & Poor's 100 Index (''OEX'') options. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend Rule 24.17 (''RAES Eligibility in OEX'') to require individual market-makers, who are eligible to participate on OEX RAES, to log onto OEX RAES any time they are present in the OEX trading crowd until the expiration date if they have logged onto OEX RAES at any earlier time in that expiration month.[4] This rule proposal would conform the OEX RAES eligibility rule to a similar requirement in the SPX RAES eligibility rule and the RAES eligibility rule for equity options. The rule proposal also would move authority over certain of the provisions of the rule from the OEX Floor Procedure Committee to the OEX Market Performance Committee (''OEXMPC''). The OEXMPC was recently formed by the Exchange to handle market performance issues of the OEX trading post, including RAES related issues.[5] The Exchange represents that it will issue a regulatory circular to its membership outlining the duties to be performed by the OEXMPC.[6]

By requiring market-makers to log onto OEX RAES each time they are in the trading crowd, the Exchange expects to ensure that there is always adequate participation in RAES to handle the small customer orders that are eligible for RAES, even in the busiest market conditions, without having to assign an inordinate number of RAES trades to any particular market-maker. Currently, the Rule does not permit the Exchange to require RAES participation by members of the OEX trading crowd in the event there appears to be inadequate participation. The Exchange believes, however, that this proposed rule change will help to avoid forced participation.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation with persons engaged in facilitating and clearing transactions in securities, and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) was provided to the Commission for its review at least five days prior to the filing date; and (4) does not become operative for 30 days from June 12, 1996,[7] the rule change proposal has

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange submitted Amendment No. 1 to clarify the duties of the OEX Market Performance Committee, as described more fully herein. See Letter from Timothy Thompson, Senior Attorney, CBOE, to John Ayanian, Attorney, Office of Market Supervision (''OMS''), Division of Market Regulation (''Market Regulation''), Commission, dated June 4, 1996 (''Amendment No. 1'').

[4] The ''expiration month'' is from the Monday following an expiration date to the next expiration date. For example, the July expiration month starts on June 24, 1996, and ends on July 19, 1996.

[5] The OEX Market Performance Committee was created in November 1995 in order to evaluate the performance of the OEX trading crowd in fulfilling its general market-related duties and to make recommendations on how to improve trading crowd performance. The OEXMPC will, among other things, recommend rules and programs to enhance market performance, respond to market performance related issues in the OEX trading crowd including RAES and firm quote concerns, monitor the opening rotation procedures used in OEX, and conduct OEX crowd evaluation surveys. See Amendment No. 1, *supra* note 3.

[6] Telephone Conversation between Timothy Thompson, Senior Attorney, CBOE, to John Ayanian, Attorney, OMS, Market Regulation, Commission, on June 12, 1996.

become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder. In particular, the Commission believes the proposal would qualify as a ''noncontroversial filing'' in that the proposed standards do not significantly affect the protection of investors or the public interest and do not impose any significant burden on competition. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to SR–CBOE–96–30 and should be submitted by July 15, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–16029 Filed 6–21–96; 8:45 am]

BILLING CODE 8010–01–M

[7] Because the Exchange filed Amendment No. 1 subsequent to the original filing date, the 30-day period commences on the filing date of Amendment No. 1.

[8] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34-37315; File No. SR-OCC-95-18]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Clarifying Rules Regarding the Unavailability of Current Index Values

June 17, 1996.

On November 24, 1995, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR-OCC-95-18) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] On March 19, 1996, OCC amended the proposed rule change.[2] Notice of the proposal was published in the Federal Register on March 27, 1996.[3] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description of the Proposal

OCC has determined that certain technical changes should be made to its rules to clarify the respective rights and responsibilities of OCC and the options exchanges (''exchanges'')[4] with respect to the reporting of current index values and the determination of settlement values. Specifically, OCC is amending Article XVII, Section 4 of its by-laws, which empowers OCC to fix an exercise settlement amount in the event that OCC determines that the current index value is unreported or otherwise unavailable, to clarify that OCC has the authority to fix an exercise settlement amount whenever the primary market for the securities representing a substantial part of the value of an underlying index is not open for trading at the time when the current index value *i.e.,* the value used for exercise settlement purposes) ordinarily would be determined. OCC believes this authority is implicit in the language of the present by-law because in such circumstances the current index value would generally be ''unreported or otherwise unavailable;'' however, OCC believes the rule change will make OCC's authority explicit.

In addition, the rule change assigns the responsibility for fixing exercise settlement amounts in situations where the current index value is unavailable or inaccurate to a panel consisting of OCC's Chairman and two designated representatives of each exchange on which the affected series is open for trading, one of whom shall be such exchange's representative on OCC's Securities Committee. This procedure to assign the decision-making responsibility to an exchange-controlled panel conforms with the procedures used in making determinations with respect to adjustments made pursuant to Article VI, Section 11.[5] The rule change authorizes the panel to fix the exercise settlement amount based on its judgment as to what is appropriate for the protection of investors and the public interest taking into account factors such as fairness to holders and writers and the maintenance of fair and orderly markets. The panel may, but is not restricted to, fixing the exercise settlement amount on the basis of the reported level of the underlying index at the close of trading on the last preceding trading day for which a closing index level was reported.

Identical changes also are being made to Article XXIII, Section 5, which governs the fixing of exercise settlement amounts for Flexibly Structured Index Options Denominated in a Foreign Currency (''FX Index Options''). Under these proposed changes, the situation contemplated by the last two sentences of the definition of ''expiration date'' in Article XXIII, Section 1.E.(3) (*i.e.,* where the primary markets for underlying securities representing a substantial part of the value of an index is closed on an expiration date) will be explicitly covered by Article XXIII, Section 5; therefore, the last two sentences of Article XXIII, Section 1.E. (3) will be deleted.

The remainder of the changes to OCC's by-laws are technical changes that are being made primarily for the purpose of conforming OCC's by-laws to changes made in the Commission's approval of FX Index Options.[6]

II. Discussion

Section 17A(b)(3)(F)[7] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from James C. Yong, First Vice President and General Counsel, OCC, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation, Commission (March 19, 1996).

[3] Securities Exchange Act Release No. 36988 (March 20, 1996), 61 FR 13558.

[4] The exchanges include the American Stock Exchange, the Chicago Board Options Exchange, the New York Stock Exchange, the Pacific Stock Exchange, and the Philadelphia Stock Exchange.

[5] Section 11 of Article VI sets forth the procedures by which adjustments are made to options when there is a distribution, stock split, rights offering, reorganization or similar event with respect to the underlying security.

[6] For a complete description of FX Index Options, refer to Securities Exchange Act Release No. 35149 (January 3, 1995), 60 FR 158 [File No. SR-OCC-94-08] (order approving proposed rule change).

[7] 15 U.S.C. 78q–1(b)(3)(F) (1988).

securities transactions. The Commission believes that OCC's proposed rule change is consistent with OCC's obligations under Section 17A(b)(3)(F) because the proposal will clarify OCC's exercise settlement procedures with respect to the determination of index values and exercise settlement values in the event such values are unavailable or unreported by the designated reporting authorities. Furthermore, the Commission believes that the rule change should clarify the respective rights and responsibilities of OCC and the exchanges in such circumstances.

As described earlier, the responsibility for fixing exercise settlement amounts is now assigned to a panel consisting of OCC's Chairman and two designated representatives of each exchange on which the affected series is open for trading. In the past, the Commission has approved this concept of utilizing an exchange-controlled panel to make determinations with respect to adjustments to options contracts.[8] The Commission believes that assigning the responsibility for fixing exercise settlement amounts in certain situations to an exchanged-controlled panel also is appropriate in this situation. Furthermore, because the proposal sets forth factors which can be considered in making any such adjustments, the proposal should add certainty to the settlement of index options. Therefore, as a whole the proposal should facilitate the prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–95–18) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–16028 Filed 6–21–96; 8:45 am]

BILLING CODE 8010–01–M

[8] Securities Exchange Act Release No. 24024 (January 23, 1987), 52 FR 3184 [File No. SR–OCC–86–11] (order granting approval of a proposed rule change to amend OCC's by-laws concerning adjustments to the terms of outstanding stock option contract).

[9] 17 CFR 200. 30–3(a)(12) (1995).

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending June 14, 1996

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–96–1444
Date filed: June 10, 1996
Parties: Members of the International Air Transport Association
Subject:
TC31 Reso/P 1119 dated May 21, 1996
South Pacific Resos r1–24
Minutes—TC31 Meet/P 0243 dated May 24, 1996
Tables—TC31 Fares 0183 dated June 4, 1996
Intended effective date: October 1, 1996

Docket Number: OST–96–1445
Date filed: June 10, 1996
Parties: Members of the International Air Transport Association
Subject:
TC2 Reso/P 1942 dated May 10, 1996 r1–4
TC2 Reso/P 1945 dated May 10, 1996 r5–6
TC2 Reso/P 1946 dated May 10, 1996 r7–11
TC2 Reso/P 1950 dated May 10, 1006 r12
TC2 Reso/P 1951 dated May 10, 1996 r13–26
TC2 Reso/P 1952 dated May 10, 1996 r27–29
Minutes—TC2 Meet/P 0367 dated June 4, 1996
TC2 Meet/P 0368 dated June 4, 1996 (Summary attached.)
Intended effective date: Sept. 1/Nov. 1/March 27, 1997

Docket Number: OST–96–1446
Date filed: June 10, 1996
Parties: Members of the International Air Transport Association
Subject:
TC12 Reso/P 1747 dated April 30, 1996 r1–25
TC12 Reso/P 1748 dated April 30, 1996 r26–34
TC12 Reso/P 1746 dated April 30, 1996 r35
Correction—TC12 Reso/P 1753 dated May 24, 1996
Minutes—TC12 Meet/P 0577 dated May 31, 1996
Tables—TC12 Fares 0503 dated May 3, 1996
TC12 Fares 0504 dated May 7, 1996
TC12 Fares 0505 dated May 14, 1996
Europe-Mid Atlantic Resolutions
Intended effective date: October 1, 1996

Docket Number: OST–96–1455
Date filed: June 14, 1996
Parties: Members of the International Air Transport Association
Subject:
TC2 Reso/C 0380 dated May 31, 1996 r1
TC3 Reso/C 0086 dated May 31, 1996 r2
TC23 Reso/C 0221 dated May 31, 1996 r3
TC31 Reso/C 0250 dated May 31, 1996 r4
COMP Reso/C 0666 dated May 31, 1996 r-5
Expedited Cargo Resolutions (NO US/US Territories) (Summary attached.)
Intended effective date: July 1/August 1, 1996

Docket Number: OST–96–1456
Date filed: June 14, 1996
Parties: Members of the International Air Transport Association
Subject:
COMP Reso/C 0663 dated May 31, 1996
Expedited Reso 003aa (US, US Territories) (Summary attached.)
Intended effective date: July 1, 1996

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–15998 Filed 6–21–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from July 15 through July 18, 1996, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Danfords Inn, 25 East Broadway, Port Jefferson, New York.

FOR FURTHER INFORMATION CONTACT: Mr. W. Frank Price, Executive Director, ATPAC, Air Traffic International Staff, ATX–20,800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9313.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463;

5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held July 15 through July 18, 1996, at the Danfords Inn, 25 East Broadway, Port Jefferson, New York.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than July 12, 1996. The next quarterly meeting of the FAA–ATPAC is planned to be held from October 21–24, 1996, in Washington, DC.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on June 19, 1996.

W. Frank Price,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 96–15979 Filed 6–21–96; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 184; Minimum Performance and Installation Standards for Runway Guard Lights

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 184 meeting to be held July 10, 1996, starting at 9:30 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: (1) Administrative Announcements; (2) Chairman's Introductory Remarks; (3) Review and Approval of Meeting Agenda; (4) Review and Approval of Minutes of the Previous Meeting; (5) Review Comments Received from Proposed Final Draft; (6) Complete Editorial and Comment Cleanup on Proposed Final Draft; (7) Other Business; (8) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 17, 1996.

Janice L. Peters,

Designated Official.

[FR Doc. 96–15982 Filed 6–21–96; 8:45 am]

BILLING CODE 4810–13–M

Notice of Intent To Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Bemidji-Beltrami County Airport, Bemidji, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Bemidji-Beltrami County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before July 24, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450–2706.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Philip C. Shealy, Airport Manager, Bemidji-Beltrami County Airport Commission, at the following address: Bemidji-Beltrami County Airport Commission, Office of the Airport Manager, 317 4th Street NW., Bemidji, Minnesota 56601–3116.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Bemidji-Beltrami County Airport Commission under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon Nelson, Program Manager, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450–2706, telephone (612) 725–4358. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Bemidji-Beltrami County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On June 7, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Bemidji-Beltrami County Airport Commission was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 6, 1996.

The following is a brief overview of the application.

PFC application number: 96–01–C–00–BJI

Level of the proposed PFC: $3.00

Proposed charge effective date; November 1, 1996

Proposed charge expiration date: June 8, 2005

Total estimated PFC revenue: $465,072

Brief description of proposed project(s):

1. Reimbursement for project to expand and remodel passenger terminal building, revise the radio control system for airfield lighting, relocate fencing, overlay of the airport access road, and acquire avigation easements.
2. Reimbursement for project to install airfield signing, automatic entry doors in the passenger terminal building, and snow retention devices on the passenger terminal building roof.
3. Reimbursement for project to update the airport master plan and airport layout plan.
4. Reimbursement for project to rehabilitate (repair and overlay) Runway 7–25, Taxiways B, C, and a portion of Taxiway A.
5. Passenger Facility Charge (PFC) application preparation costs.
6. Pavement rehabilitation for Runway 13–31.
7. Pavement rehabilitation for Taxiway A.
8. Safety area upgrade for Runway 07.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Bemidji-Beltrami County Airport Commission Office.

Issued in Des Plaines, Illinois, on June 14, 1996.

Benito DeLeon,

Manager, Airports Planning/Programming Branch, Great Lakes Region.

[FR Doc. 96–15980 Filed 6–21–96; 8:45 am]

BILLING CODE 4910–13–M

Surface Transportation Board [1]

[STB Finance Docket No. 32979]

Consolidated Rail Corporation—Trackage Rights Exemption—Grand Trunk Western Railroad, Inc.

Grand Trunk Western Railroad, Inc. (GTW) has agreed to grant limited overhead trackage rights to Consolidated Rail Corporation (Conrail) over a portion of its Main Line Track as follows: (Zone 1) beginning at existing interchange track and rail connections between GTW and Conrail in Lansing, MI, at milepost 219.7 (or the future connection at Cedar at milepost 221.5), extending westerly to the point of connections at the western end of the Battle Creek Joint Section at milepost 175.29; (Zone 2) beginning at the point of connections of GTW main tracks at the west end of the Battle Creek Joint Section at milepost 176.91, extending westerly to a new connection track to be constructed at the existing rail crossing at grade, at Schoolcraft, MI, at milepost 146.8. The total trackage rights over both routes is approximately 74.52 (or 76.32 with the future connection at Cedar). The trackage rights are granted for the sole purpose of Conrail's use for bridge traffic only between GTW/Conrail connections. The trackage rights also provide that all Conrail movements over the subject trackage (except movements over the Joint Section only) must either enter or exit at Lansing, and that Conrail shall not perform any local service (including switching services) and shall not interchange traffic with any other carrier. The trackage rights were to become effective on or after June 17, 1996.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32979, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: John J. Paylor, Associate General Counsel, Consolidated Rail Corporation, 2001 Market Street, 16A, Philadelphia, PA 19101–1416.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Decided: June 17, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–16018 Filed 6–21–96; 8:45 am]

BILLING CODE 4915–00–P

Surface Transportation Board [1]

[STB Docket No. AB–55 (Sub-No. 522X)]

CSX Transportation, Inc.—Abandonment Exemption—in Osceola County, FL

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 10903 the abandonment by CSX Transportation, Inc., of 3.02 miles of rail line between milepost 808.00 and milepost 811.02 in Kissimmee, Osceola County, FL, subject to standard labor protective conditions and an environmental condition.

DATES: The exemption will be effective July 24, 1996 unless stayed or a statement of intent to file an offer of financial assistance (OFA) is filed. Statements of intent to file an OFA [2] under 49 CFR 1152.27(c)(2) and requests for a notice of interim rail use/rail banking under 49 CFR 1152.29 must be filed by July 5, 1996; petitions to stay must be filed by July 9, 1996; requests for a public use condition under 49 CFR 1152.28 must be filed by July 15, 1996; and petitions to reopen must be filed by July 19, 1996.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Docket No. AB–55 (Sub-No. 522X) must be filed with: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423; a copy of all pleadings must be served on petitioner's representative: Charles M. Rosenberger, 500 Water Street-J150, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., 1201 Constitution Avenue, N.W., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: June 7, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–16019 Filed 6–21–96; 8:45 am]

BILLING CODE 4915–00–P

Surface Transportation Board [1]

[Docket No. AB–462 (Sub-No. 1X)]

Southeastern International Corporation—Abandonment Exemption—in Jefferson and Chambers Counties, TX

AGENCY: Surface Transportation Board.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323–24.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve

ACTION: Notice of exemption.

SUMMARY: The Board exempts from the prior approval requirements of 49 U.S.C. 10903–04 the abandonment by Southeastern International Corporation of approximately 13.57 miles of rail line between milepost 62.57 near Fannett and milepost 49.00 near Stowell, in Jefferson and Chambers Counties, TX, subject to public use and standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 24, 1996. Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2)[2] must be filed by July 5, 1996; petitions to stay must be filed by July 9, 1996; requests for a public use condition conforming to 49 CFR 1152.28(a)(2) must be filed by July 15, 1996; and petitions to reopen must be filed by July 19, 1996.

ADDRESSES: Send pleadings referring to Docket No. AB–462 (Sub-No. 1X) to: (1) Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW., Washington, DC 20423, and (2) Petitioner's representative: Richard H. Streeter, Barnes & Thornburg, 1401 Eye Street, NW., Suite 500, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., 1201 Constitution Avenue, NW., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: June 6, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–16017 Filed 6–21–96; 8:45 am]

BILLING CODE 4915–00–P

functions retained by the ICCTA. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903. Therefore, this notice applies the law in effect prior to the ICCTA, and citations are to the former sections of the statute, unless otherwise indicated.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–REIT

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–REIT, U.S. Income Tax Return for Real Estate Investment Trusts.

DATES: Written comments should be received on or before August 23, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Real Estate Investment Trusts.

OMB Number: 1545–1004.

Form Number: 1120–REIT.

Abstract: Form 1120–REIT is filed by a corporation, trust, or association electing to be taxed as a real estate investment trust in order to report its income and deductions and to compute its tax liability. IRS uses Form 1120–REIT to determine whether the income, deductions, credits, and tax liability have been correctly reported.

Current Actions: On page 3 of Form 1120–REIT, Schedule J, Line 4c was revised to remove the checkboxes for Form 5884 (Jobs Credit) and Form 6765 (Credit for Increasing Research Activities). The jobs credit under Internal Revenue Code section 51 has expired for employees who began work after 1994. The research credit under Code section 41 expired June 30, 1995. There will be a write-in entry on line 4e for qualifying credits passed through to the REIT from 1995–1996 fiscal year partnerships.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 176.

Estimated Time Per Respondent: 124 hrs. 57 min.

Estimated Total Annual Burden Hours: 21,991.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 7, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–15921 Filed 6–21–96; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request For Form 1120–F

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning a revision to Form 1120–F, U.S. Income Tax Return of a Foreign Corporation.

DATES: Written comments should be received on or before August 23, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue

Service, room 5571, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return of a Foreign Corporation.

OMB Number: 1545–0126.

Form Number: 1120–F.

Abstract: Form 1120–F is used by foreign corporations that have investments, or a business, or a branch in the U.S. The IRS uses Form 1120–F to determine if the foreign corporation has correctly reported its income, deductions, and tax, and to determine if it has paid the correct amount of tax.

Current Actions: On page 4 of Form 1120–F, Schedule J, Line 4c was revised to remove the checkboxes for Form 5884 (Jobs Credit) and Form 6765 (Credit for Increasing Research Activities). The jobs credit under Internal Revenue Code section 51 has expired for employees who began work after 1994. The research credit under Code section 41 expired June 30, 1995. There will be a write-in entry on line 5 for qualifying credits passed through to the corporation from 1995–1996 fiscal year partnerships.

Line 8b of Schedule J, the environmental tax, was deleted. This tax (Code section 59A) does not apply for tax years that begin after December 31, 1995.

A new schedule of interest expense of foreign corporations computed in accordance with Treasury Regulations section 1.882–5 was added to the instructions for line 18 of Section II, Income Effectively Connected With the Conduct of a Trade or Business in the United States. This schedule will enable foreign corporations to more accurately compute their interest deduction related to income effectively connected with the conduct of a U.S. trade or business in accordance with Regulations section 1.882–5.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 18,000.

Estimated Time Per Respondent: 230 hrs. 31 min.

Estimated Total Annual Burden Hours: 4,149,360.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 7, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–15922 Filed 6–21–96; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form W–4P

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form W–4P, Withholding Certificate for Pension or Annuity Payments.

DATES: Written comments should be received on or before August 23, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Withholding Certificate for Pension or Annuity Payments.

OMB Number: 1545–0415.

Form Number: W–4P.

Abstract: Form W–4P is used by the recipient of pension or annuity payments to designate the number of withholding allowances he or she is claiming, an additional amount to be withheld, or to elect that no tax be withheld, so that the payer can withhold the proper amount.

Current Actions: There are no changes being made to this form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 12,000,000.

Estimated Time Per Respondent: 1 hr. 47 min.

Estimated Total Annual Burden Hours: 21,480,000.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 12, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–15923 Filed 6–21–96; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Forms 8329 and 8330

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and

other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Forms 8329, Lender's Information Return for Mortgage Credit Certificates (MCCs) and 8330, Issuer's Quarterly Information Return for Mortgage Credit Certificates (MCCs).

DATES: Written comments should be received on or before August 23, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 8329, Lender's Information Return for Mortgage Credit Certificates (MCCs) and Form 8330, Issuer's Quarterly Information Return for Mortgage Credit Certificates (MCCs).

OMB Number: 1545–0922.

Form Number: Forms 8329 and 8330.

Abstract: Form 8329 is used by lending institutions and Form 8330 is used by state and local governments to provide the IRS with information on the issuance of mortgage credit certificates (MCCs) authorized under Internal Revenue Code section 25. IRS matches the information supplied by lenders and issuers to ensure that the credit is computed properly.

Current Actions: There are no changes being made to these forms at this time.

Type of Review: Extension of currently approved collections.

Affected Public: Business or other for-profit organizations and State, Local or Tribal Governments.

Estimated Number of Respondents: 10,000—Form 8329; 500—Form 8330.

Estimated Time Per Respondent: 5 hr. 53 min.—Form 8329; 29 hr. 0 min.—Form 8330.

Estimated Total Annual Burden Hours: 58,800—Form 8329; 14,500—Form 8330.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 12, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–15924 Filed 6–21 –96; 8:45 am]

BILLING CODE 4830–01–P

Proposed Collection; Comment Request for Form 1099–R

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

DATES: Written comments should be received on or before August 23, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

OMB Number: 1545–0119.

Form Number: Form 1099–R.

Abstract: Form 1099–R is used to report distributions from pensions, annuities, profit-sharing or retirement plans, IRAs, and the surrender of insurance contracts. This information is used by IRS to verify that income has been properly reported by the recipient.

Current Actions: There are no changes being made to this form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 350,000.

Estimated Time Per Respondent: 41 hrs. 46 min.

Estimated Total Annual Burden Hours: 14,620,000.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 13, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–15926 Filed 6–21–96; 8:45 am]

BILLING CODE 4830–01–P

Proposed Collection; Comment Request for Form 8840

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the

Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8840, Closer Connection Exception Statement for Aliens.

DATES: Written comments should be received on or before August 23, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Closer Connection Exception Statement for Aliens.

OMB Number: 1545–1410.

Form Number: Form 8840.

Abstract: Form 8840 is used by an alien individual, who otherwise meets the substantial presence test, to explain the basis of the individual's claim that he or she is a nonresident of the United States by reason of the closer connection exception described in Reg. sec. 301.7701(b)–2.

Current Actions: There are no changes being made to this form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 350,000.

Estimated Time Per Respondent: 2hrs. 10 min.

Estimated Total Annual Burden Hours: 756,000.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 13, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–15927 Filed 6–21–96; 8:45 am]

BILLING CODE 4830–01–P

Proposed Collection; Comment Request for Form 1099–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–A, Acquisition or Abandonment of Secured Property.

DATES: Written comments should be received on or before August 23, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Acquisition or Abandonment of Secured Property.

OMB Number: 1545–0877

Form Number: Form 1099–A

Abstract: Form 1099–A is used by persons who lend money in connection with a trade or business, and who acquire an interest in the property that is security for the loan or who have reason to know that the property has been abandoned, to report the acquisition or abandonment.

Current Actions: There are no changes being made to this form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations

Estimated Number of Respondents: 15,800.

Estimated Time Per Respondent: 3 hrs. 39 min.

Estimated Total Annual Burden Hours: 57,600.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 13, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer,

[FR Doc. 96–15928 Filed 6–21–96; 8:45 am]

BILLING CODE 4830–01–U

Bureau of the Public Debt

Privacy Act of 1974; Computer Matching Program

AGENCY: Bureau of the Public Debt, Department of the Treasury.

ACTION: Notice of computer matching program between the Bureau of the Public Debt, Department of the Treasury, and the United States Postal Service.

SUMMARY: Subsection (o) of the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503) requires agencies to publish advance notice of computer matching programs as a means of informing the public of plans to conduct computer matches.

DATES: Comments must be received on or before July 24, 1996. Unless comments are received that result in a contrary determination, the matching program covered by this notice will begin no sooner than 40 days after this notice, report, and a copy of the matching agreement, as approved by the Data Integrity Boards of both agencies have been sent to the Congress and the Office of Management and Budget (or later if there are objections to the agreement), or 30 days after publication

of this notice in the Federal Register, whichever date is later.

ADDRESS: Comments may be mailed to Jimmy Phillips, Debt Collection Officer, Bureau of the Public Debt, PO Box 1328, Parkersburg, West Virginia 26101–1328.

FOR FURTHER INFORMATION CONTACT: Jimmy L. Phillips, Debt Collection Officer, Bureau of the Public Debt, (304) 480–5110.

SUPPLEMENTARY INFORMATION: The Bureau of the Public Debt (Public Debt), Department of the Treasury, proposes to conduct a computer matching program with the United States Postal Service (USPS). The matching program will compare USPS payroll and Public Debt debtor records to identify USPS employees delinquently indebted to the Federal Government under programs administered by Public Debt. When voluntary payment is not forthcoming, Public Debt will request offset of those debts under the offset provisions of the Debt Collection Act of 1982 (Pub. L. 97–365).

Set forth below is a description of the computer matching program proposed by this notice in compliance with OMB Circular A–130, Appendix I,''Federal Agency Responsibility for Maintaining Records about Individuals,'' dated February 8, 1996.

Notice of Computer Matching Program:

Bureau of the Public Debt, Department of the Treasury, and the United States Postal Service (Comparing Public Debt Debtor Records and USPS Payroll Records).

Recipient agency:

The United States Postal Service (USPS).

Source agency:

Bureau of the Public Debt (Public Debt)

Purpose of the Matching Program:

This matching program will compare USPS payroll and Public Debt delinquent debtor files to identify USPS employees who may owe delinquent debts to the Federal Government under programs administered by Public Debt. The pay of an employee identified and verified as a delinquent debtor may be offset under the provisions of the Debt Collection Act of 1982 when voluntary repayment is not forthcoming.

Legal Authorities Authorizing Operation of the Match:

This matching program will be undertaken under the authority of the Debt Collection Act of 1982, as amended (Pub. L. 97–365); 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 31 U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716 Administrative Offset; 5 U.S.C. 5514 Installment Deduction for Indebtedness (Salary Offset); 4 CFR Chapter II Federal Claims Collection Standards (General Accounting Office—Department of Justice), 550.1101—550.1108 Collection by Offset from Indebted Government Employees (OPM); 31 CFR Part 5, Subparts B and D (Department of the Treasury) which authorize Federal agencies to offset a Federal employee's salary as a means of satisfying delinquent debts owed to the United States.

Categories of Individuals Matched and Identification of Records Used:

The system of records maintained by the participant agencies under the Privacy Act of 1974, as amended, from which records will be disclosed for this matching program are:

1. USPS will use records from its ''Finance Records—Payroll System, USPS 050.020'' containing payroll records for approximately 800,000 current employees. Disclosure will be made pursuant to routine use No. 24 of USPS 050.020, which was last published in 57 FR 57515, dated December 4, 1992.

2. Public Debt will provide extracts from six Privacy Act systems of records containing records about approximately 1,800 debtors, full descriptions of which were last published in the Federal Register on November 9, 1995. Disclosure will be made from:

(1) ''Personnel and Administrative Records—Treasury/BPD .001'' (60 FR 56865), routine use No. 7;
(2) ''United States Savings Type Securities—Treasury/BPD .002'' (60 FR 56868), routine use No. 14;
(3) ''United States Securities (Other than Savings Type Securities)—Treasury/BPD .003'' (60 FR 56870), routine use No. 14;
(4) ''Treasury Integrated Management Information System (TIMIS)—Treasury/DO .002 (60 FR 56651), routine use No. 15;
(5) ''Treasury Integrated Financial Management and Revenue System—Treasury/DO .210 (60 FR 56675), routine use No. 11; and
(6) ''Telephone Call Detail Records—Treasury/DO .211'' (60 FR 56677), routine use No. 11.

Description of the Matching Program:

Public Debt will provide to USPS a data extract containing the names and social security numbers (SSNs) of its debtors. By computer, the USPS will compare this information with its payroll file, establishing matched individuals (i.e., ''hits'') on the basis of like SSNs. For each matched individual, the USPS will provide to Public Debt the following information: name, SSN, home address, date of birth, work location, and employee type (permanent or temporary). The identity and debtor status of an individual will be verified by Public Debt by manually comparing the ''hit'' file with Public Debt's debtor files; conducting independent inquiries when necessary to resolve questionable identities; and reviewing records of the suspected debtor's account to confirm that the debt is still in a non-pay status without resolution.

Due process procedures will be provided by Public Debt to matched individuals consisting of: (1) Verification of the debt; (2) 30-day written notice to the debtor explaining the debtor's rights; (3) provision for the debtor to examine and copy Public Debt's documentation of the debt; (4) provision for the debtor to seek Public Debt's review of the debt; (5) opportunity for a hearing before an individual who is not under the supervision or control of Public Debt; and (6) opportunity for the debtor to enter into a written agreement satisfactory to Public Debt for repayment. Only after Public Debt has afforded the debtor these opportunities and certified over the signature of an authorized agency official that all due process procedures have been followed will steps be taken to effect involuntary offset.

Beginning and Ending Dates of the Matching Program:

The matching program is expected to begin in June 1996, but no sooner than 40 days after transmittal of this notice, computer matching agreement, and report to the Congress and the Office of Management and Budget and to continue in effect for a period not to exceed 18 months (December 1997). The agreement may be extended for an additional 12 months beyond that if, within three months prior to the actual expiration date of the matching agreement, the Data Integrity Boards of both the USPS and the Treasury Department find that the computer matching program can be conducted without change and each party certifies that the matching program has been conducted in compliance with the matching agreements.

Dated: June 18, 1996

Ida Hernandez

Acting Deputy Assistant Secretary (Administration)

[FR Doc. 15997 Filed 6–21–96: 8:45 am]

Billing Code: 4810–40–F

Federal Register

Monday
June 24, 1996

Part II

Department of the Interior
Bureau of Indian Affairs

Department of Health and Human Services
Indian Health Service

25 CFR Part 900

Indian Self-Determination and Education Assistance Act Amendments; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

25 CFR Part 900

RINs 1076–AD21; 0905–AC98

Indian Self-Determination and Education Assistance Act Amendments

AGENCIES: Departments of the Interior and Health and Human Services.

ACTION: Final rule.

SUMMARY: The Secretaries of the Department of Interior (DOI) and the Department of Health and Human Services (DHHS) hereby issue a joint rule to implement section 107 of the Indian Self-Determination Act, as amended, including Title I, Pub. L. 103–413, the Indian Self-Determination Contract Reform Act of 1994. This joint rule, as required by section 107(a)(2)(A)(ii) of the Act, will permit the Departments to award contracts and grants to Indian tribes without the unnecessary burden or confusion associated with having two sets of rules for single program legislation. In section 107(a)(1) of the Act Congress delegated to the Departments limited legislative rulemaking authority in certain specified subject matter areas, and the joint rule addresses only those specific areas. As required by section 107(d) of the Act, the Departments have developed this final rule with active tribal participation, using the guidance of the Negotiated Rulemaking Act.

DATES: This rule will become effective on August 23, 1996.

FOR FURTHER INFORMATION CONTACT: James Thomas, Division of Self-Determination Services, Bureau of Indian Affairs, Department of the Interior, Room 4627, 1849 C Street N.W., Washington, DC 20240, Telephone (202) 208–5727 or Merry Elrod, Division of Self-Determination Services, Office of Tribal Activities, Indian Health Service, Room 6A–19, 5600 Fishers Lane, Parklawn Building, Rockville, MD 20857, Telephone (301) 443–6840/1104/1044.

SUPPLEMENTARY INFORMATION: The 1975 Indian Self-Determination and Education Assistance Act, Pub. L. 93–638, gave Indian tribes the authority to contract with the Federal government to operate programs serving their tribal members and other eligible persons. The Act was further amended by the Technical Assistance Act and other Acts, Pub. L. 98–250; Pub. L. 100–202; Interior Appropriations Act for Fiscal Year 1988, Pub. L. 100- 446; Indian Self-Determination and Education Assistance Act Amendments of 1988, Pub. L. 100–472; Indian Reorganization Act Amendments of 1988, Pub. L. 100–581; miscellaneous Indian Law Amendments, Pub. L. 101–301; Pub. L. 101–512; Indian Self-Determination and Education Assistance Act Amendments of 1990, Pub. L. 101–644; Pub. L. 102–184; Pub. L. 103–138; Indian Self-Determination Act Amendments of 1994, Pub. L. 103–413; and Pub. L. 103–435. Of these, the most significant were Pub. L. 100–472 (the 1988 Amendments) and Pub. L. 103–413 (the 1994 Amendments).

The 1988 Amendments substantially revised the Act in order ''to increase tribal participation in the management of Federal Indian programs and to help ensure long-term financial stability for tribally-run programs.'' Senate Report 100–274 at 2. The 1988 Amendments were also ''intended to remove many of the administrative and practical barriers that seem to persist under the Indian-Self-Determination Act.'' Id. at 2. In fashioning the amendments, Congress directed that the two Departments develop implementing regulations over a 10-month period with the active participation of tribes and tribal organizations. In this regard, Congress delegated to the Departments broad legislative rulemaking authority.

Initially the two Departments worked closely with Indian tribes and tribal organizations to develop new implementing regulations, culminating in a joint compromise September 1990 draft regulation reflecting substantial tribal input. Thereafter, however, the two Departments continued work on the draft regulation without any further tribal input. The revised proposed regulation was completed under the previous administration, and the current administration published the proposed regulation (1994 NPRM) for public comment on January 20, 1994, at 59 FR 3166. In so doing, the current administration expressed its concern over the absence of tribal participation in the regulation drafting process in the years following August 1990, and invited tribes to review the 1994 NPRM closely for possible revisions.

Tribal reaction to the January 1994 proposed regulation was extremely critical. Tribes, tribal organizations, and national Indian organizations criticized both the content of the 1994 NPRM and its length, running over 80 pages in the Federal Register. To address tribal concerns in revising the proposed regulations into final form, the Departments committed to establish a Federal advisory committee that would include at least 48 tribal representatives from throughout the country, and be jointly funded by the two Departments.

In the meantime, Congress renewed its examination into the regulation drafting process, and the extent to which events since the 1988 amendments, including the lengthy and controversial regulation development process, justified revisiting the Act anew. This Congressional review eventually led to the October 1994 amendments. (Similar efforts by tribal representatives to secure amendments to the Act in response to the developing regulations had been considered by Congress in 1990 and 1992.)

The 1994 amendments comprehensively revisit almost every section of the original Act, including amending the Act to override certain provisions in the January 1994 NPRM. Most importantly for this new NPRM, the 1994 amendments also remove Congress' prior delegation to the Departments of general legislative rulemaking authority. Instead, the Departments' authority is strictly limited to certain areas, a change explained in the Senate report that accompanied the final version of the bill:

> Section 105 of the bill addresses the Secretaries' authority to promulgate interpretative regulations in carrying out the mandates of the Act. It amends section 107 (a) and (b) of the Act by limiting the delegated authorization of the Secretaries to promulgate regulations. This action is a direct result of the failure of the Secretaries to respond promptly and appropriately to the comprehensive amendments developed by this committee six years ago.
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> Section 105(l) amends section 107(a) by delegating to the Secretary the authority only to promulgate implementing regulations in certain limited subject matter areas. By and large these areas correspond to the areas of concern identified by the Departments in testimony and in discussions. Beyond the areas specified in subsection (a) * * * no further delegated authority is conferred.

Sen. Rep. No. 103–374 at 14. For this reason, the new rule covers substantially fewer topics than the January 1994 NPRM.

As specified by Congress, the new rule is limited to regulations relating to chapter 171 of title 28 of the United States Code, commonly known as the ''Federal Tort Claims Act;'' the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.); declination and waiver procedures; appeal procedures; reassumption procedures; discretionary grant procedures for grants awarded

under section 103 of the Act; property donation procedures arising under section 105(f) of the Act; internal agency procedures relating to the implementation of this Act; retrocession and tribal organization relinquishment procedures; contract proposal contents; conflicts of interest; construction; programmatic reports and data requirements; procurement standards; property management standards; and financial management standards. All but three of these permitted regulatory topics—discretionary grant procedures, internal agency procedures, and tribal organization relinquishment procedures—are addressed in this rule.

The 1994 amendments also required that, if the Departments elected to promulgate regulations, the Departments must use the notice and comment procedures of the Administrative Procedure Act, and must promulgate the regulations as a single set of regulations in title 25 of the Code of Federal Regulations. Section 107(a)(2). Finally, the 1994 amendments required that any regulations must be developed with the direct participation of tribal representatives using as a guide the Negotiated Rulemaking Act of 1990. This latter requirement is also explained in the accompanying Senate Report:

> To remain consistent with the original intent of the Act and to ensure that the input received from the tribes and tribal organizations in the regulation drafting process is not disregarded as has previously been the case, section 107 also has been amended by adding a new subsection (d), requiring the Secretaries to employ the negotiated rulemaking process.

Sen. Rep. No. 103–374 at 14. As a result of the October 1994 amendments and earlier initiatives previously discussed, the Departments chartered a negotiated rulemaking committee under the Federal Advisory Committee Act. The committee's purpose was to develop regulations that implement amendments to the Act.

The advisory committee had 63 members. Forty-eight of these members represented Indian tribes—two tribal members from each BIA area and two from each IHS area. Nine members were from the Department of the Interior and six members were from the Department of Health and Human Services. Additionally, four individuals from the Federal Mediation and Conciliation Service served as facilitators. The committee was co-chaired by four tribal representatives and two Federal representatives. While the committee was much larger than those usually chartered under the Negotiated Rulemaking Act, its larger size was justified due to the diversity of tribal interests and programs available for contracting under the Act.

In order to complete the regulations within the statutory timeframe, the committee divided the areas subject to regulation among six working groups. The workgroups made recommendations to the committee on whether regulations in a particular area were desirable. If the committee agreed that regulations were desirable, the workgroups developed options for draft regulations. The workgroups presented their options to the full committee, where the committee discussed them and eventually developed the proposed regulations.

The first meeting of the committee was in April of 1995. At that meeting, the committee established six workgroups, a meeting schedule, and a protocol for deliberations. Between April and September of 1995, the committee met five times to discuss draft regulations produced by the workgroups. Each of these meetings generally lasted three days. Additionally, the workgroups met several more times between April and September to develop recommendations for the committee to consider.

The policy of the Departments was, whenever possible, to afford the public an opportunity to participate in the rulemaking process. All of the sessions of the committee were announced in the Federal Register and were open to the public.

The Departments published draft regulations in a Notice of Proposed Rulemaking in the Federal Register on January 24, 1996, at 61 FR 2038. (1996 NPRM) In the 1996 NPRM, the Departments invited the public to comment on the draft provisions. In addition, the Departments outlined five areas in which the Committee had not yet reached consensus and asked for public comments specifically addressing those topics.

Ultimately, the Departments received approximately 76 comments from Indian tribes and tribal organizations, addressing virtually every aspect of the proposed regulation. The full committee reconvened in Denver between April 29, 1996 and May 3, 1996 to review the comments, to evaluate changes suggested by the comments, and to approve final regulatory language.

As a result of that meeting, the full committee was able to transmit a report to the Secretaries which included consensus regulatory language on all but four issues: internal agency procedures; contract renewal proposals; conflicts of interest; and construction management services. Tribal and Federal representatives prepared non-consensus reports on these four issues, which were submitted to the Secretaries for a decision. One additional question arose, pertaining to § 900.3(b)(11) of the regulation, and that was also referred to the Secretaries. On May 23, 1996 a delegation of tribal representatives met with the Chiefs of Staff of the two departments to present the tribal view of the unresolved issues. Decisions have been made based upon the arguments presented at that meeting, and the regulation incorporates those decisions.

The Departments commend the ability of the committee to cooperate and develop a rule that addresses the interests of the tribes and the Federal agencies. This negotiated rulemaking process has been a model for developing successful Federal and tribal partnerships in other endeavors. The consensus process allowed for true bilateral negotiations between the Federal government and the tribes in the best spirit of the government-to-government relationship.

In developing regulatory language, consensus was reached on the regulations which follow under subparts ''A'' through ''P''. In addition, at the request of tribal and Federal representatives, the Secretaries agreed to publish additional introductory materials under subpart ''A.''

Summary of Regulations and Comments Received

The narrative and discussion of comments below is keyed to specific subparts of the rule. Matters addressed under the heading ''Key Areas of Disagreement'' in the Notice of Proposed Rulemaking are discussed under the appropriate Subpart.

Subpart A—Policy

Summary of Subpart

This subpart contains key congressional policies contained in the Act and adds several Secretarial policies that will guide the Secretaries' implementation of the Act.

A number of comments recommended that the statement that tribal records are exempt from disclosure under the Freedom of Information Act (§ 900.2(d)) be further explained to include annual audit reports prepared by tribal contractors and tribal records archived by the Federal government. The suggestion regarding archived tribal records has been adopted. However, section 7502(f) of the Single Audit Act of 1984, 31 U.S.C. 7502(f), and OMB Circular No. A–128, Audits of State and Local Governments, subparagraph 13(e), state that single audit reports shall be available for public inspection within

30 days after the completion of the audit. Therefore, these audit reports are available for public inspection.

Numerous comments expressed concern over the nonapplicability of the Privacy Act to tribal medical records, in section 900.2(e). Although section 108(b) of the Act is binding in this respect, Subpart C (§ 900.8) has been amended to address the confidentiality of medical records. Indian Tribes and tribal organizations remain free to adopt their own confidentiality procedures, including procedures that are similar to Privacy Act procedures.

A large number of comments urged that the NPRM be amended to include a Secretarial policy to interpret Federal laws and regulations in a manner that will facilitate the inclusion of programs in contracts authorized by the Act. In response to these comments, the Committee has added the language in Secretarial policy statement in § 900.3(b)(8). This policy is not intended to limit in any manner the scope of programs, functions, services or activities that are contractible under section 102(a)(1) of the Act.

Discussion of Comments

Several comments recommended that various policy statements be clarified to reflect the congressional policy that funds for programs, services, functions and activities are transferred to tribal contractors when contracts are awarded under the Act. These comments have been adopted and appropriate changes made to § 900.3(a)(4), § 900.3(b)(4) and § 900.3(b)(9).

One comment found the last two words of § 900.3(a)(8) confusing due to the inclusion of the words ''as appropriate.'' In response, these words have been deleted in the final rule.

Several comments recommended that the phrase ''and for which funds are appropriated by Congress'' be deleted from the Secretarial policy statement set forth in § 900.3(b)(1). The Committee agreed and deleted this phrase in the final rule.

The Committee revised 900.3(b)(7) (referring to the scope of programs that are contractible under the Act) to be consistent with the new policy set forth in 900.3(b)(8).

Several comments urged that § 900.d(b)(9) be amended to articulate more clearly the Secretaries' duty to commence planning for the transfer of programs to tribal operation immediately upon receipt of a contract proposal. In response to the comments, § 900.3(b)(9) has been revised.

A large number of comments urged that the provision regarding Federal program guidelines, manuals, or policy directives set forth in § 900.5 of the NPRM be revised to refer more generally to any unpublished requirements. In response to these comments, § 900.5 has been revised in the final rule.

Some comments urged that language be included to identify the inherent Federal functions that cannot lawfully be carried out by an Indian tribe or tribal organization, and that therefore may not be contracted under the Act. The Committee did not adopt these comments due to the subject-matter limitations on its rulemaking authority set forth in section 107(a)(1) of the Act. Similarly, the Committee did not address comments relating to the appropriate uses of program income generated under the Federal Medicare and Medicaid programs.

One comment expressed concern regarding the absence of clear provisions for tribal participation in the administration of Federal Indian programs. No change was made as this concern is already dealt with in § 900.3(a)(1).

One comment recommended that the Secretary adopt a policy that Indian tribes participate in the development of the budgets of agencies other than the Indian Health Service and the Bureau of Indian Affairs. The Committee did not adopt this proposal due to the subject-matter limitation set forth in section 107(a)(1) of the Act, and the limitation in section 106(I) of the Act regarding tribal participation.

One comment urged that the Secretarial policy regarding tribal participation in budgetary matters set forth in § 900.3(b)(6) be more clearly articulated as a mandatory duty. Nothing in the new regulation is intended to change the Department's current consultation requirements. Accordingly, no change was made in the text of the regulation.

A few comments urged that the phrase ''for the benefit of Indians because of their status as Indians'' or the phrase ''for the benefit of Indians'' be further defined in the regulation. The Committee rejected suggestions that the concept of ''contractibility'' be further explored in the regulations due to the specific subject-matter limitations of section 107(a)(1) of the Act.

Subpart B—Definitions

Summary of Subpart

Subpart B sets forth definitions for key terms used in the balance of the regulations. Terms unique to one subpart are generally defined in that subpart, rather than in subpart B.

Summary of Comments

In response to one comment regarding the term ''awarding official'' the definition has been revised and an additional sentence added to make clear that an ''awarding official'' need not necessarily be a warranted contracting officer. Who the awarding official is in a particular situation will depend on to whom the Secretary has delegated authority to award the contract.

In response to comments regarding the scope of Subpart C (which deals with ''initial contract proposals''), the term ''initial contract proposal'' has been added as a new definition in the final rule. The definition clarifies that the requirements for an ''initial contract proposal'' do not apply to other proposals such as proposals to renew contracts governing programs, services, functions or activities that are already under tribal operation.

In response to one comment regarding the procedural aspects of reassumption, the definition of ''reassumption'' has been revised to refer the reader to the notice and other procedures set forth in Subpart P.

One comment requested that the term ''Indian tribe'' be revised. The Committee rejected the comment in favor of the definition of this term already set forth in the statute and repeated in § 900.6 of the final rule.

Two comments urged that the Secretary add a new definition of the term ''consultation'' to establish a framework for this activity. The Committee rejected this proposal as beyond the scope of subjects which may be regulated under section 107(a)(1) of the Act. Similarly, the Committee rejected requests that the regulations include a definition of ''trust responsibility.''

In the NPRM, the public was invited to comment on the disagreement within the Committee regarding the development of internal agency procedures. Specifically, as noted in 61 FR at 2039–2040, tribal representatives on the Committee urged that internal agency procedures be developed in precisely the same fashion as other regulations implementing the Indian Self-Determination Act Amendments of 1994, through the use of the negotiated rulemaking process. Federal representatives on the Committee supported instead a joint tribal and Federal commitment to work together to generate a procedural manual which would promote the purposes underlying the Act and facilitate contracting by Indian tribes and tribal organizations. The Federal committee members proposed committing to a firm timeline

within which to produce such a manual. Further, the Federal Government committed to ''meaningful consultation'' throughout the manual development process.

The Departments received many comments from tribal representatives addressing the issue of internal agency procedures as a subject for negotiated rulemaking. Those comments consistently supported the tribal proposal to include a Subpart in the regulation concerning internal agency procedures.

Many of the comments indicated a belief that all internal agency procedures under which Indian tribes and tribal organizations exercise their self-determination should be promulgated by negotiated rulemaking. Those comments cited sections 107 (a) and (d) of the Act as authority for their recommendation.

Tribal representatives also indicated a concern that absent formal rulemaking, Federal agencies might use internal procedures to circumvent the policies underlying the Act, thwarting the intent to simplify the contracting process and free Indian tribes from excessive Federal control. Two comments suggested that negotiating rulemaking procedures will ensure that Federal agencies would be bound to follow uniform procedures to implement and interpret the Act and the regulations.

Two other comments wanted the regulation to state explicitly that the Secretaries lack authority to interpret the meaning or application of any provision of the Act or the regulations. Tribal representatives feared that a myriad of letters containing policy statements and correspondence interpreting reporting requirements would result if internal agency procedures are not tied to formal rulemaking.

In response to the Federal proposal as detailed in the NPRM, several comments stated that it would not be acceptable to develop a manual in a setting which is less formal and structured than a negotiated rulemaking committee. In addition, comments objected that developing such a manual after the publication of a final regulation would violate the mandatory deadline imposed on the Secretaries by Congress.

Several comments were suspicious of the government's commitment to seek tribal consultation on internal agency procedures. They stated that consultation alone would be insufficient to ensure that Indian tribes and tribal organizations are accorded the full benefits of the Act. Without full and active participation, one comment stated, Indian tribes would be in the position of attempting to change decisions made in advance by Federal agencies.

The Departments agree to an enhanced consultation process in developing procedures that do not involve resource allocation issues. Features of this enhanced process could include facilitation by professional facilitators, consensus decision-making, opportunity for comment by tribal entities, and reporting of decisions to the Secretaries. The Departments will convene a meeting to begin this process within sixty days of the regulations becoming effective.

Subpart C—Contract Proposal Contents

Summary of Regulation

Subpart C contains provisions relating to initial contract proposal contents. In this area, the committee opted to have minimal regulations. Subpart C consists of a checklist of 13 items that must be addressed in a proposal. In addition, the regulation contains a provision relating to the availability of technical assistance to assist Indian tribes and tribal organizations in preparing a contract proposal, and a provision relating to the identification of Federal property that the tribe or tribal organization intends to use during contract performance.

Summary of Comments

Several comments recommended amending § 900.7 to permit the Secretary to provide technical assistance funding in addition to technical assistance. To reflect the concerns the two sentences were added at the end of the section. The first sentence authorizes the Secretary to make technical assistance grants, and the second authorizes an Indian tribe or tribal organization to request reimbursement of pre-award costs for obtaining technical assistance under the Act.

One comment recommended the insertion of objective standards in § 900.7 to measure the authenticity of a claim that technical assistance cannot be provided due to the availability of appropriations. This recommendation was not adopted because the provision that technical assistance be subject to the availability of appropriations comes directly from Section 103(d) of the Act. In addition, it is clear that if qualified agency personnel are available, technical assistance will be provided to prepare an initial contract proposal.

Several comments recommended deleting the word ''must'' and inserting the word ''should'' in the first sentence of § 900.8. This recommendation was not adopted because the proposal requirements in this subsection represent the minimum amount of information required for the Departments to approve a proposal.

Several comments generally objected to § 900.8 on the grounds that it requires the production of information that the Federal Government has no right to know, or that is in excess of statutory requirements. Although some modifications were made to § 900.8 in response to comments, it is the consensus of the Committee that the information included in the final version of § 900.8 is necessary to protect Indian tribes or tribal organizations, or because it is essential information required by the Departments in order to be able to review or decline a contract proposal, to determine whether any of the statutory declination criteria exist.

A number of comments expressed concern that § 900.8(d) does not clearly bar the Secretary from revising service area boundaries over the objections of tribes located in an established service area. This recommendation was not adopted because it is the intent of this provision for the applicant to define the service area. This specific provision was debated at length by the Negotiated Rulemaking Committee, and the proposed regulatory provision in § 900.8(d) is the compromise agreed to by consensus of the Committee.

In response to a comment, the words ''an identification'' were deleted from § 900.8(e), and replaced with the words ''the name, title,'' for clarification purposes.

In response to a comment, the words ''a description'' were deleted from § 900.8(g)(3), and replaced with the words ''an identification'' for clarification purposes.

In response to a comment, § 900.8(g)(7) was amended to read ''minimum staff qualifications proposed by the Indian tribe or tribal organization, if any'' for clarification purposes.

In response to several comments objecting to the requirement in § 900.8(g)(4) that financial, procurement, and property management standards be included in the proposal, reference to these standards was deleted from this subsection, and a new subsection (g)(8) was added to require a statement that the Indian tribe or tribal organization meet minimum procurement, property, and financial management standards set forth in Subpart F, subject to waivers that may have been granted under Subpart K.

In response to several comments requesting that the words ''tribal shares'' be defined, § 900.8(h)(1) was modified by removing these words and inserting

''the Indian tribe or tribal organization's share of funds.''

In response to a comment, § 900.8(h)(2) was amended by including the word ''start-up'' after the word ''one-time'' to make this section consistent with the Act.

Several comments objected to the use of the word ''budget'' in § 900.8(h), and to the level of detail required under this subsection. This subsection was redrafted to delete the word ''budget'' wherever it appears, and replace it with ''amount of funds requested'' or ''funding request.'' In addition, §§ 900.8(h)(1) (i), (ii), and (iii) were deleted.

In response to a comment that the information sought in § 900.8(h)(5) was unnecessary, this subsection was redrafted for clarification purposes, and the words ''[a]t the option of the Indian tribe or tribal organization'' were added at the beginning of the subsection.

A new subparagraph (m) was added to § 900.8 to provide that in its contract proposal, an Indian tribe or tribal organization must state that it will implement procedures appropriate to the program being contracted to assure the confidentiality of information relating to the financial affairs of individual Indians obtained under a proposed contract, and of medical records, or as otherwise required by law. While tribal comments objected to the imposition of regulatory procedures on confidentiality of personal financial information, many comments were received from Indian tribes indicating a concern that the confidentiality of personal medical records in the hands of tribal contractors be preserved, notwithstanding the opinion of DHHS Office of General Counsel that the Privacy Act does not apply to such records. The provision for such an assurance with respect to personal financial information resulted from a compromise in the Committee between the Federal and tribal positions.

In response to a comment suggesting that Indian tribes or tribal organizations should receive a list of Federal property used in carrying out programs to be contracted, a new question and answer were added immediately preceding § 900.10. In response to a comment, this new section also includes a requirement that the condition of the property be described.

In response to a comment, § 900.11(a)(4) was modified to add the words ''real and personal'' before the word ''property'' for clarification purposes.

Several comments requested clarification regarding whether the contract proposal becomes part of the contract document. In response, a new question and answer were added to clarify that the contract proposal becomes part of the final contract only by mutual agreement of the parties.

Several comments suggested that Subpart C be clarified to address what is contractible and what is inherently Federal and thus residual. The Committee did not adopt the suggestion. Federal agency decisions regarding residual functions are subject to the appeals process.

Subpart D—Review and Approval of Contract Proposals

Summary of Regulation

Although this topic is part of the declination process, it has been pulled out for separate treatment to facilitate a clearer understanding of the entire contracting process. In this area, the committee opted to have minimal regulations. This subpart details what the Secretary must do upon receiving a contract proposal, the time frames applicable to Secretarial review, how the 90-day review period can be extended, and what happens if a proposal is not declined within the 90-day period.

Summary of Comments

One comment indicated that the word ''Secretary'' in this Subpart does not define where the proposal should actually be submitted. Subpart B defines the word ''Secretary'' to include either Secretary or their delegates. It is clear that a proposal should therefore be submitted to the agency with jurisdiction over the program to be contracted, i.e., the Bureau of Indian Affairs, the Indian Health Service, the Bureau of Land Management, the National Park Service, etc.

A comment suggested amending § 900.15(a) to require the Secretary to return any proposal lacking the required authorizing resolution(s) to the applicant without further action. This suggestion was not adopted because § 900.15(b) requires that the applicant be notified of any missing information. It should be clear, however, that Section 102(a)(2) of the Act only requires the Secretary to consider a proposal if ''so authorized by an Indian tribe'' pursuant to the tribal resolution required under Section 102(a)(1) of the Act. Therefore, although technically outside of the enumerated declination criteria in Section 102(a)(2) of the Act, it is also clear that the Act precludes the approval of any proposal and award of any self-determination contract absent an authorizing tribal resolution.

Several comments requested that the 15-day timeframe in § 900.15 be cut to 10 days. This suggestion was not adopted because 15 days are needed to evaluate the application. The word ''request'' was added before the words ''that the items'' in this subsection for clarification purposes, and in response to several comments.

Several comments expressed concerns with the failure of this Subpart to specify what happens when a proposal is approved. The comments recommended addressing the award and funding of the contract. In response to these concerns, the question and the answer in § 900.16 were amended to reflect that the award of the contract occurs upon approval of the proposal. Also, the committee added the words ''and add to the contract the full amount of funds pursuant to § 106(a) of the Act'' were added at the end of § 900.18. Also, a new section was added to explain what happens when a proposal is approved.

One comment suggested adding a provision in § 900.18 to provide that costs incurred after the 90-day period be deemed allowable costs under the contract and be reimbursed. This suggestion was not adopted because it is beyond the scope of this Subpart.

A comment inquired whether the 90-day period continues to run if the Indian tribe is notified that there are missing items, or whether the 90-day period starts only when there is a complete proposal. The regulation in § 900.15(b) requires the Secretary to notify the applicant of any missing items, and to request the applicant to furnish these items within 15 days. If the applicant fails to submit the missing items altogether, the Secretary must either approve or decline the proposal that was received within 90 days of receipt. Similarly, if the applicant submits the missing items within the 15-day deadline, the 90-day period continues to run from the time of receipt of the original proposal.

Subpart E—Declination Procedures

Summary of Subpart

This subpart implements sections 102 (a)(2), (a)(4), (b) and (d) of the Act. It restates the statutory grounds for declining a contract proposal, clarifies that a proposal cannot be declined based on any objection that will be overcome through the contract, and details procedures applicable for partial declinations. Subpart E also informs Indian tribes and tribal organizations of the requirements the Secretary must follow when a declination finding is made, contains provisions for technical

assistance to Indian tribes and tribal organizations to avoid a declination finding, and to overcome stated declination grounds after a declination finding is made.

Summary of Comments

Several comments noted that the proposed regulations fail to address the continuation of mature contracts, and recommended that this issue be addressed. This recommendation was not adopted because there is no statutory authority to issue regulations on the mature contract process. In addition, the right to mature contracts is addressed in Section 105(c)(1) of the Act and in the Model Contract under Section 108 of the Act. Continuation of any contract is also addressed in § 900.32 of the final rule.

One comment recommended that declination of construction contracts be addressed in this Subpart. This recommendation was not adopted because this issue is addressed in § 900.123 of the final rule.

Several comments recommended a further explanation of the criteria in § 900.22. These comments were not adopted because it was decided not to interpret the declination criteria in the regulation, but to leave their interpretation to case-by-case adjudication.

One comment suggested adding an applicant's failure to submit the single agency audit report and/or failure to correct prior audit deficiencies as a declination ground in § 900.22. This comment was not adopted because there is no statutory authority to add declination criteria to those specified in Section 102(a)(2) of the Act.

In response to a comment, the reference to Section 106 of the Act in § 900.26 was replaced with a reference to Section 102(a) of the Act.

There were numerous comments objecting to the document disclosure provisions in § 900.27 of NPRM (now § 900.29). In response to these objections, § 900.27(a) was amended to delete the words ''when appropriate'' and replace them with the words ''within 20 days.'' In addition, § 900.27(c) was deleted in its entirety.

Several comments requested that the Secretary's burden of proof when declining a proposal in § 900.297(a) be changed to ''clear and convincing evidence.'' This recommendation was not adopted because it is different from the statutory burden of proof contained in Section 102(a)(2) of the Act.

A comment requested that the technical assistance to be provided in § 900.30 be clearly identified. This recommendation was not adopted because the type of technical assistance required will vary with each proposal. It is impossible to define generally the type of technical assistance required for all proposals.

Pursuant to several comments, the word ''substantively'' was deleted from two places in § 900.32, and replaced by the word ''substantially.''

The Committee received several comments regarding the ability of the BIA and other agencies of the Department of the Interior to review contract renewal proposals for declination issues, where the renewal proposal is substantially similar to the contract previously held by that Indian tribe or tribal organization. In the past, as a matter of practice, neither IHS nor the BIA has reviewed contract renewal proposals for declination issues. Therefore, the Departments have agreed that IHS and the BIA will not use the declination process in contract renewals where there is no material or significant change to the contract. However, as no past practice exists for the non-BIA agencies within DOI, those agencies will have discretion to use the declination process in appropriate contract renewal situations. The regulatory language of § 900.32 has been amended to reflect this decision.

Subpart F—Standards for Tribal or Tribal Organization Management Systems

Summary of Subpart

Indian self-determination contracts are unique agreements because, by definition, they are not procurement contracts, discretionary grants or cooperative agreements. This means that none of the usual procurement or grant regulations apply to the management of the Federal funds provided under these contracts. The absence of established guidelines presented a special challenge to the committee to develop standards which would assure appropriate stewardship of the Federal funds and other assets being transferred through these contracts. Deliberations on this issue led to the review of OMB Circular A–102 and the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (the ''Common Rule''). Although an Indian self-determination contract is not a discretionary grant, the Common Rule provides certain government-to-government management principles that apply to discretionary Federal grants to states, local governments, and Indian tribes.

The Common Rule has two-tiered management rules. On one tier, it generally defers to state law and regulations and accepts a state's management standards without imposing more detailed requirements. On the second tier, other local governments and Indian tribes (which vary greatly in size and structure) must observe the Rule's more detailed standards for the management of Federal grants.

In the interest of giving greater recognition to the government-to-government relationship which exists between Indian tribes and the Federal government, and to transfer greater responsibility to Indian tribes commensurate with their status, the committee established standards permitting the management of contract resources in accordance with tribal laws, regulations and procedures, just as the Common Rule permits states to manage Federal resources in accordance with state laws and procedures. Systems established by Indian tribes will govern the administration of contracts provided that they include the core management principles or standards adopted from the Common Rule which the committee determined best meet the needs of Indian tribes and tribal organizations.

Subpart F contains provisions relating to the following management standards: (1) Financial Management; (2) Procurement Management and (3) Property Management. In all of these areas the advisory committee designed minimal regulations that focus on the minimum standards for the performance of the three management systems used by Indian tribes and tribal organizations when carrying out self-determination contracts.

The standards contained in this subpart are designed to be the targets which the Indian tribe and tribal organization's management systems should be designed and implemented to meet. The management systems themselves are to be designed by the Indian tribe or tribal organization.

Section 900.36 contains general provisions which apply to all management system standards contained in this subpart. Subpart F includes provisions that: (1) Identify the management systems that are addressed; (2) set forth the requirements imposed; (3) limit the applicability of OMB circulars; (4) provide that the Indian tribe or tribal organization has the option to impose these standards upon subcontractors; (5) identify the difference between a standard and a system; and (6) specify when the management standards and management systems are evaluated.

Section § 900.44 contains the standards for financial management

systems. Subpart F establishes the minimum requirements for seven elements including: (1) Financial reports; (2) accounting records; (3) internal control; (4) budget control; (5) allowable costs; (6) source documentation; and (7) cash management.

Section 900.47 contains standards for procurement management systems. This subpart establishes the minimum requirements for seven elements: (1) To ensure that vendors and subcontractors perform in accordance with the terms of purchase orders or contracts; (2) to require the Indian tribe or tribal organization to maintain standards of conduct for employees award contracts to avoid any conflict of interest; (3) to review proposed procurements to avoid buying unnecessary or duplicative items; (4) to provide full and open competition, to the extent feasible in the local area, subject to the Indian preference and tribal preference provisions of the Act; (5) to ensure that procurement awards are made only to entities that have the ability to perform consistent with the terms of the award; (6) to maintain records on significant history of all major procurements; and (7) to establish that the Indian tribe or tribal organization is solely responsible for processing and settling all contractual and administrative issues arising out of a procurement. In addition, the regulation provides that each Indian tribe or tribal organization must establish its own small purchase threshold and definition of ''major procurement transactions''; establish minimum requirements for subcontract terms, and include a provision in its subcontracts that addresses the application of Federal laws, regulations and executive orders to subcontractors.

Section 900.51 contains the minimum requirements for property management systems. Subpart F addresses the standards for both Federally-titled property and property titled to an Indian tribe or tribal organization, with differences based upon who possesses title to the property. As a general rule the requirements for property where the Federal agency retains title are higher than requirements for property where the Indian tribe or tribal organization holds the title. Subpart F addresses elements including: (1) Property inventories; (2) maintenance of property; (3) differences in inventory and control requirements for property where the Federal agency retains title to the property; and (4) the disposal requirements for Federal property.

Summary of Comments

A comment requested that the rule clarify the application of Office of Management & Budget (OMB) Circulars or portions of OMB Circulars that apply to the operation of Indian Self-Determination Act contracts.

Section 900.37 specifies that the only OMB Circulars that apply to self-determination contracts are those (1) Incorporated the by Act, such as OMB Circular A–128, ''Audits of States and Local Governments''; (2) adopted by these regulations; or (3) agreed to by the Indian tribe or tribal organization pursuant to negotiations with the Secretary. In regard to these regulations, § 900.45(e) identifies the appropriate OMB Circular Cost Principles that should be used in determining the propriety of contract costs.

One comment asked the Committee to delete § 900.40(a) because it is overreaching and exceeds statutory requirements. This section was a fundamental underpinning of the entire Subpart. The negotiators agreed that the regulations would include standards, to be treated as minimum requirements, for the administration of contracts. For an initial contract proposal only, Federal officials may review the standards proposed by the Indian tribe or tribal organization, to determine that they meet or exceed these minimum regulatory requirements. Indian tribes or tribal organizations are responsible for the implementation of administrative systems that meet the standards and that are subject to review in accordance with the Single Agency Audit requirements as provided in Section 5(f) of the Act. In many respects, this dichotomy between the standards and systems was designed to acknowledge the unique and special nature of self-determination contacts (non-procurement intergovernmental agreements) and a shift in the regulatory emphasis from the unnecessary and burdensome review of systems to an emphasis on the acceptance of fundamental guiding management principles. This approach is consistent with provisions in the Act at Sections 5(b), 102(a)(2), 105 (a)(1) (2) and (3) and 107(a)(1) and in the Model Contract Section 108(b)(7)(c). For these reasons no change was made in § 900.40.

It was suggested that the Committee delete the words ''or tribal organization'' in § 900.42 from both the question and the answer as this section applies only to Indian tribes. The comment was correct and the words have been deleted.

The Committee was requested to clarify the period of time that Indian tribes and tribal organizations must retain records of contract operations. A new § 900.41 was created to address these issues. That section specifies that Indian tribes and tribal organizations should keep: (1) Financial records for three years from the date of the single audit submission; (2) procurement records for three years from the date of final payment to the supplier; and (3) property management records for three years from the date of disposition, replacement or transfer of the property. In addition, records related to litigation, audit exceptions and claims should be retained until the action is completed.

One comment suggested that the regulation provide for the Secretary to obtain consistent and timely financial information to respond to Congressional inquiries and to otherwise support budget justifications. Section 900.45(a) was amended by adding a provision that provides for the submission of a Financial Status Report, SF 269A. The frequency of submission of the SF 269A remains the subject of negotiation between the Indian tribe or tribal organization and the Secretary. The Department expect that the frequency will not be less than once per year. This change only affects how the information is transmitted to the government and is consistent with Section 5(f)(2) of the Act.

The committee was asked to specify which of the three Office of Management and Budget Circulars dealing with cost principles apply to a tribal organization. In that regard, a tribal organization could be a chartered entity of a tribe, a non-profit organization, and/or an educational institution.

Section 900.45(e) has been amended by revising the parenthetical statement and including a chart to clarify the application of the Office of Management & Budget circulars. The parenthetical statement makes clear that which circular is applicable is negotiable with the Secretary and that current agreements concerning Office of Management & Budget cost principles need not be renegotiated.

The committee was asked to adopt proposed clarifying language for Subsection 900.45(g). The regulations were amended to adopt the suggested language that provides a more accurate description of the standards for a cash management component of financial management systems.

One comment suggested adding the following new language to § 900.45(h):

If an Indian tribe or tribal organization contracts to assume a program, service, function, or activity which includes a physical trust asset or natural resource, the

Indian tribe or tribal organization shall enter upon its financial management system and provide for an accurate, current, and complete disclosure of the value of those assets, provide for an accurate, current and complete disclosure of funds by source and application utilized to keep the physical trust assets or natural resources in good repair and maintenance; provide for an accurate, current, and complete disclosure of any increase or decrease in the valuation of the asset; and provide for an accurate, current and complete disclosure of any other costs, function or activity which would improve, increase, or cause devaluation or decrease in the value of the physical trust asset or natural resource as would be required to account for any asset using generally accepted accounting principles and standards.

The Committee did not include this provision principally because it is beyond the scope of these regulations. Currently, the United States does not track the values of natural resources (i.e. national parks or Indian lands) in this fashion. Therefore, no financial basis exists to begin the process. The cost of establishing the basis would undermine and frustrate self-determination contracting. While the proposal has merits, it would not be possible to implement it effectively until appropriate guidance is issued on valuation of Federal natural resources, the United States enters the information in its financial records, and funds are made available to tribal governments to cover the cost of implementation. In regard to guidance, the Federal Accounting Standards Advisory Board has not issued any authoritative instructions on the valuation of Federal natural resources. This matter is currently under consideration by the Board.

Another comment asked the Committee to revise § 900.46 to require the Secretary to be held to a ''strict standard of compliance with the terms of the contract and the annual funding agreement.'' Further, the comment suggested deleting the words ''In regard to paragraph (g) of Sec. 900.44 [of the NPRM]'' and ''based upon the payment schedule provided for in.'' The Committee was asked to add ''in strict compliance with'' for the last phrase deleted. Section 900.46 was amended to make this section of the regulations consistent with the statute.

A comment recommended that § 900.48(c) be amended to include provisions requiring ''cost and price analysis'' in the procurement standards. Subsection § 900.48(c) was amended by adding the phrase ''and ensure the reasonableness of the price'' at the end of the subsection. This was done to ensure that cost or price analysis be considered in all procurements, but to avoid the application of a full Federal procurement-type cost or price analysis since self-determination contracts are not subject to the Federal Acquisition Regulations (FARs). It is the responsibility of the Indian tribe or tribal organization to design a procurement system based upon the standards in Subpart F. The amendment will require those systems to consider the ''reasonableness of price'' when making procurement purchases.

The Committee was asked to clarify § 900.50, including the provision of further guidance about the application of tribal law generally and the application of Tribal Employment Rights Ordinances (TERO) specifically. § 900.50 was substantially revised, to make clear that subcontracts by an Indian tribe or tribal organization may require the subcontractor to comply with certain provisions of the Act and other Federal laws. The new language informs subcontractors that they are responsible for identifying and complying with applicable Federal laws and regulations. The section was further amended to provide that, to the extent the Secretary and the Indian tribe or tribal organization identify and specify laws and regulations that are applicable to subcontracts in the negotiation of the self- determination contract, those identified and specified provisions will then be included in subcontracts.

These regulations do not specifically address the application of tribal law, but establish minimum standards for the operations of management systems. Indian tribes may exercise discretion and create higher standards by operation or enactment of tribal law. Similarly, an Indian tribe may seek a waiver of a standard as noted in § 900.36 of the regulations. Nothing in the regulations is designed to supersede or suspend the operation of tribal law that meets these standards. Further nothing in the regulations affects the operation of tribal law to activities not paid for by self-determination contract funds.

Sections 7(b) and (c) of the Act authorize the application of Indian Preference and Tribal Preference (TERO) in the performance of a self-determination contract. To the extent a TERO ordinance is consistent with the terms of Section 7(b) and (c) of the Act it can be made applicable to procurement subcontracts.

Property Management

The Committee was asked to define ''sensitive property'' in § 900.52, and as a result, a definition of ''sensitive personal property'' was inserted at § 900.52(b). That definition includes all firearms and provides that the Indian tribes and tribal organization are to define such other personal property ''that is subject to theft and pilferage.'' Since the activities vary from contract to contract to such a large extent, the committee decided that a locally-created definition best meets the needs of all contractors.

One comment indicated § 900.60(b) might require revision regarding the authority of an Indian tribe or tribal organization to dispose of Federal property. The Committee revised subsection (b) of § 900.60 by deleting all of subsection (1), that previously allowed for disposal if the Secretary failed to respond to a disposal request. As a result, if the Secretary fails to respond to a request from an Indian tribe or tribal organization within the sixty day period, the Indian tribe or tribal organization may return the Federal property to the Secretary. The Secretary is required to accept the property and is required to reimburse the contractor for all costs associated with the transfer. This ensures that Indian tribes and tribal organizations have a process to dispose of unneeded Federal property, and the reimbursement of transfer costs should provide the Secretary with an incentive to respond in a timely fashion to disposal requests.

The committee was asked to clarify that the property disposal procedures in § 900.60 only apply to personal property, because the answer to the question uses the terms ''personal property'' and ''property.'' Using the term ''property'' which, by definition, includes both real and personal property, creates ambiguity about application of the paragraph to the disposal of real property.

Section 900.60 only applies to the disposal of personal property. The matter has been clarified through editorial revision of the introductory question, to read as follows: ''How does an Indian tribe or tribal organization dispose of Federal personal property?''

Subpart G—Programmatic Reports and Data Requirements

Summary of Subpart

This brief subpart provides for the negotiation of all reporting and data requirements between the Indian tribe or tribal organization and the Secretary. Failure to reach an agreement on specific reporting and data requirements is subject to the declination process. Although the Indian Health Service proposes to develop a uniform data set, that data set will only be used as a guide for negotiation of specific requirements.

Summary of Comments

One comment argued for the revision of § 900.65, that provides for the submission of programmatic reports and data ''to meet the needs of the contracting parties.'' The comment was concerned that the section could be used to force Federal minimum reporting requirements upon Indian tribes and tribal organizations despite the provision in Section 5(f) of the Act that make reporting the subject of negotiations.

Section 900.65 has been amended to address the comment. A new introductory sentence was added that makes clear that unless there is a statutory requirement, these regulations create no mandatory reporting requirements. The negotiation of reporting is to be responsive to the needs of the parties and appropriate for the purpose of the contract. This provides the Indian tribe or tribal organization, as well as the Secretary, with guidance and limits for negotiations. Furthermore, because of the numerous comments made concerning the § 900.65 provision, ''meet the needs of the contracting parties,'' and the amendment noted above, § 900.67 was also amended to make it consistent with § 900.65 by substituting, ''which responds to the needs of the contracting parties,'' for ''meets the needs of the contracting parties''.

The Committee was asked to clarify grammar in § 900.68. The Committee concluded that the word ''for'' was inadvertently included in the first line of § 900.68. The ''for'' has been and a comma added between ''set'' and ''applicable'' in the first line. This should eliminate the confusion.

Subpart H—Lease of Tribally-Owned Buildings by the Secretary

Summary of Subpart

Section 105(l) of the Act authorizes the Secretary to lease tribally-owned or tribally-leased facilities and allows for the definition of ''other reasonable expenses'' to be determined by regulation. This subpart provides a non-exclusive list of cost elements that may be included as allowable costs under a lease between the Indian tribe or tribal organization and the Secretary. It further clarifies that except for ''fair market rental,'' the same types of costs may be recovered as direct or indirect charges under a self-determination contract.

The Subpart was substantially revised based upon comments received following the NPRM. Please note that two sections have been added, and previous § 900.71 and § 900.72 have now become § 900.73 and § 900.74 respectively.

Summary of Comments

Comments requested that the Committee specify the type of account and the guardian of the account for a reserve for replacement of facilities identified in § 900.70(c).

The final regulation adds two new sections to accomplish this. New § 900.71 was added to set forth the type of account as a ''special revenue fund'' or a ''capital project fund.'' New § 900.72 was also added to provide that the Indian tribe or tribal organization is the guardian of the fund. It permits fund investments in a manner consistent with the laws, regulations and policies of the Indian tribe or tribal organization, subject to lease terms and the self-determination contract.

The Committee was asked to add landscaping costs to those items of cost included in § 900.70(e)(1–16). No such addition was made as the Committee believed that such costs were included in either subsection (8) or subsection (16) of § 900.70(e).

Likewise, another comment suggested adding profit to those matters listed in § 900.70(e). In the Committee's view, a lease based upon fair market value provides for the recovery of profit, adjusted as appropriate, based upon the Federal Share (if any) of acquisition or construction. Therefore, no change was made to this provision.

The committee was asked to identify the source of funds for these lease payments. The source of funds is a subject of negotiation between the parties to a self-determination contract.

Subpart I—Property Donation Procedures

Summary of Subpart

This subpart establishes procedures to implement section 105(f) of the Act. Section 900.85 provides a statement of the purpose of the subpart and explains that while the Secretary has discretion in the donation of excess and surplus property, ''maximum'' consideration must be given to an Indian tribe or tribal organization's request.

This subpart also contains a provision for the Secretary to elect to reacquire property under specific conditions. It clarifies that certain property is eligible for operation and maintenance funding, as well as for replacement funding on the same basis as if title to the property were held by the United States.

Section 900.87 provides for the transfer of property used in connection with a self-determination contract. It provides slightly different procedures for personal property versus real property furnished before the effective date of the 1994 amendments and another procedure for property furnished after the enactment of the 1994 amendments.

Sections 900.91 and 900.92 address § 105(f)(2)(A) of the Act, which provides that a tribal contractor automatically takes title to property acquired with contract funds unless an election is made not to do so. It also addresses the process for requesting that real property be placed ''in trust.''

Section 900.97 addresses BIA and IHS excess property donation while § 900.102 addresses excess or surplus property from other Agencies.

Summary of Comments

The committee was asked to clarify this Subpart as it is confusing and generally repetitive. The Subpart addresses the methodology that provides property to Indian tribes and tribal organizations pursuant to the Indian Self-Determination Act. Because there are several classes of property, with varying rights and mechanisms, the Subpart must address each separately. In order to reduce confusion, the final regulations provide more uniformity depending on the property type.

It was suggested that the Committee restore the language that was initially adopted by the Committee, but not included, in § 900.86. The language change in the NPRM accommodates the use of ''plain English'' and was not intended to change the manner in which the Secretary exercised discretion. The Committee has reinstated the originally-approved version by striking the words ''give maximum weight'' and substituting ''exercise discretion in a way that gives maximum effect'' following the word ''will'' in the first line of the answer in § 900.86. A similar amendment can be found at § 900.97(a).

To ensure clarity, several comments requested that the regulation specify as to whether property is real property or personal property in given instances. The Committee has used the word ''property'' in these regulations to mean both real and personal property except where not applicable to one or the other type of property. If either the words ''real'' or ''personal'' modify ''property'' that provision is limited to that type of property.

The committee was asked to change the incorrect reference to 41 CFR 101–47, 202.2(b)(10) in §§ 900.87 (b)(2) and (c)(2). The miscitation has been corrected.

In addition, the committee was asked to delete the terms ''justify and certify''

in § 900.86 as well as § 900.97 and § 900.104 because these terms frustrate the statutory intent and limit access to property needed to carry out self-determination contracts. The Committee amended the above-noted sections and substituted ''state how'' or ''statement of how'' for the ''justify and certify'' provision. This was done to make clear that what is needed is a concise, simple statement of how the subject property is ''appropriate for use for a purpose of which a self-determination contract is authorized under the Act,'' the statutory language. The Committee expects that the deletion of the terms ''justify or certify'' makes it clear that no detailed submission will be required by the Secretary or his designee.

Comments requested revision in the process described in § 900.87 pertaining to property that was made available before or after October 25, 1994. The Committee has chosen not to make changes, as the October 25, 1994 date is the result of the 1994 Amendments to the Act. That date is the effective date of Public Law 103–413. Those amendments provided at Section 105 of the Act that Indian tribes or tribal organizations could take title to government-furnished property used in performance of the contract property unless the Indian tribe or tribal organization preferred the Secretary to retain title. Prior to October 25, 1994, title to such property remained with the Secretary.

This provision allows an Indian tribe or tribal organization to receive title to government-furnished property put in use prior to October 25, 1994. In part, that allows Indian tribes or tribal organizations greater flexibility with the Property Management standards in Subpart F above. For these, reasons no further changes were made in § 900.87.

One comment suggested that the regulation clarify the references to the value of property subject to reacquisition or acquisition by the Secretary at the time of retrocession, reassumption, termination or expiration of the contract. Among the concerns expressed were the value at the time of reacquisition, whether it was acquisition or reacquisition, the lack of consideration of depreciation, and the use of property by multiple contracts when only one or a portion of one contract triggers this issue. These comments relate to Sections 900.89, 900.93, and 900.100, all of which address this issue depending upon the class of property.

The Committee took action to make uniform sections 900.89, 900.93, and 900.100. These new sections all contain an additional subsection that addresses the issue of property used in multiple contracts. This new subsection provides that the Secretary and contractor shall negotiate an ''acceptable arrangement'' for continued sharing and the title to the property.

In order to address current value (at the time of retrocession, etc.) the section was revised to ''current fair market'' and another clause was added, ''less the cost of improvements borne by the Indian tribe or tribal organization.'' This was done so that where an Indian tribe or tribal organization has made improvements to a piece of property, the value of the improvements is factored into arriving at the $5,000 value threshold. The Committee also reviewed the depreciation questions but concluded that the current fair market value approach would adequately take these factors into consideration. Moreover, since services would be provided to Indian beneficiaries by the Secretary, the best approach with the reacquired property was current fair market value.

In regard to § 900.93, one comment proposed a change to the question by substituting ''reacquire'' for ''acquire.'' Upon review the Committee concluded that ''acquire'' was the correct term because this section addresses contractor-purchased property. In that instance, the Secretary has never had title and ''acquire'' is the proper term.

The revisions to the above-noted sections have also been incorporated into Subpart P of the regulations. No further comments will be discussed in this preamble on Sections 900.89, 900.93, or 900.100 since the operative provisions are now uniform.

With regard to Sections 900.96 and 900.103, several comments asked when the Secretary will notify Indian tribes and tribal organizations about the availability of excess BIA and IHS personal property and GSA excess and surplus property. Suggestions of quarterly or semi-annually were made. At both § 900.96 and § 900.103 the term ''not less than annually'' has been added. This creates a minimum requirement that the Secretary must meet yet allows for more frequent notices.

Some comments asked the Committee to provide further instruction in § 900.97(b) relating to multiple requests by contractors the same excess or surplus property.

The Committee revised these subsections to clarify what will occur in that situation. In regard to personal property, the request first received by the Secretary will have precedence. If the requests are received by the Secretary on the same date, the requestor with the lowest transportation costs will prevail.

A technical amendment was made to § 900.97(c) by changing ''piece of real property'' to ''parcel of real property.''

The committee was asked to delete the reference to the Federal Property Management Regulation, 41 CFR Chapter 101, as that reference had at § 900.104(b) the potential to incorporate an entirely different set of regulations, not consistent with the Act. The references to the Federal Property Management Regulation (FPMR) and 41 CFR Chapter 101 were deleted and ''Section 900.86 of this Subpart'' was substituted. The Committee made this revision to reflect that these regulations are unique to self-determination contracts and to avoid any conflict between these regulations and the FPMR.

Several comments were made concerning the need for the Secretary to act expeditiously to acquire excess or surplus government property when the property is frozen by the Indian tribe or tribal organization, in § 900.104(c). The Committee revised subsection (c) of § 900.104 by harmonizing the several suggestions.

Several comments called for clarification of § 900.107 by explaining which type of property remains eligible for replacement funding. The Committee changed the question in § 900.107 and deleted ''Yes'' from the answer. This makes clear that government-furnished property, contractor-purchased property and excess BIA and IHS property are eligible for replacement funding consistent with Section 105(f) of the Act. Only excess or surplus government property from other agencies is not eligible for such replacement.

Subpart J—Construction Contracts

Summary of Subpart

Subpart J addresses the process by which an Indian tribe or tribal organization may contract for construction activities or portions thereof. The subpart is written to inform readers of the breadth and scope of construction contracting activities conducted by the Departments, and provides opportunities for Indian tribes or tribal organizations to choose the degree to which they wish to participate in those activities. The subpart provides for extensive cooperation and sharing of information between the Departments and an Indian tribe or tribal organization throughout the construction process. The subpart provides for different construction contracting methods, such as award of

contracts through subpart J, award of contracts through section 108 of the Act, and award of grants in lieu of contracts depending on the degree of Federal involvement and the phase(s) of construction activities for which the Indian tribe or tribal organization seeks to contract.

The construction process is described in phases, starting with a preplanning phase, followed by a planning phase, a design phase, and a construction phase. Provisions are included so an Indian tribe or tribal organization can seek a contract through section 108 of the Act for the planning phase and for construction management services. It is not required that these functions be pursued through a section 108 contract: if the Indian tribe or tribal organization so elects, these activities can be part of a subpart J contract.

Definitions are provided that are specific to this subpart and this subpart establishes new procedures to facilitate tribal contracting, through such measures as tribal notification and other provisions.

The subpart promotes the exploration of alternative contracting methods, and eliminates the applicability of the Federal acquisition regulations except as may be mutually agreed to by the parties.

The subpart describes the process for negotiating a construction contract, including the process for arriving at a fair and reasonable price, and details the process for resolving disagreements in the contracting process. The subpart also sets forth minimum requirements for contract proposals, and details the respective roles of tribes and the Secretary.

The subpart promotes tribal flexibility in several areas, including through periodic payments at least quarterly, and the payment of contingency funds to be administered by the tribal contractor.

Summary of Comments

Approximately 185 comments were received from non-governmental representatives, most of these from Nations and tribes rather than individuals. This preamble reflects the committee response to each comment in a section-by-section format. References to no action being taken by the Committee indicate that no change was made to the regulation.

Several comments proposed that the phrase ''or real property'' be added after ''Federal facilities.'' The comments were adopted to ensure that related construction work was covered under Subpart J. The new phrase adds ''and/or other related work'' after ''demolition.''

Eight comments argued that supportive administrative functions should be specifically recognized as contractible in the language of § 900.111. The Committee decided that the language was adequate as published. One comment proposed adding ''or tribal organization authorized'' after ''tribe.'' This comment was adopted.

One comment proposed to add a bid award phase. The comment was not adopted because it is presently included in the individual phases described in the regulation. Three comments stated that tribal involvement was not included in the site selection process. Site selection was adopted and inserted into subsection 900.112(a)(2) and (3). One comment proposed to add ''assessment and'' after ''initial'' at § 900.112(a)(1) and ''associated activities'' after ''assessments'' at § 900.112(b)(2). Both comments were adopted.

Several comments stated that § 900.113(b) implies that Indian tribes and tribal organizations will always subcontract with a consultant rather than using tribal employees to perform certain functions. This was not the intent of the proposed regulation. The Committee adopted the proposed language: ''An Indian tribe or tribal organization's employee or construction management services consultant (typically an engineer or architect) performs such activities as:'' and struck ''The construction management services consultant (typically an engineer or architect) assists and advises the Indian tribe or tribal organizations in such activities as.''

Five comments suggested that the phrase ''and real property'' should be included at § 900.113(c) after ''Buildings and Facilities.'' The committee took no action on these comments.

Three comments stated that the critical distinction between construction contracts and section 108 model agreements are the requirements which apply to each. The committee took no action on this comment.

One comment stated that § 900.115(b)(1) should be clarified to indicate that the term ''Act'' refers to the Office of Federal Procurement Policy Act. The comment was adopted and the work ''such'' was deleted and the word ''that'' was inserted.

Nine comments suggested that cost reimbursement contracts should also allocate the risk. The Committee took no action. One comment suggested replacing ''fixed-price'' with ''negotiated.'' The Committee adopted ''negotiated'' and inserted it before ''fixed-price'' in both the question and response.

Two comments stated that subsection 900.117(a)(2) treats the consequences of the Secretary's failure to act in a way that is very unfavorable to Indian tribes and, therefore, against the policy of the Self-Determination Act. The comments argued that the Secretary's failure to act should render the POR *accepted* rather than rejected. The Committee did not agree on this change. Three comments stated that this section should contain standards or other objective criteria against which the POR will be reviewed. The Committee concluded that these criteria will be negotiated between the parties and identified in the contract. One comment suggested revising the timeframes contained in the subsection to accommodate a shorter construction period due to weather concerns. The Committee decided to add a subsection at the end of Subpart J to address this issue.

Seven comments argued that construction management services may be performed by tribal employees. The Committee adopted the language ''and/or tribal or tribal organization employees'' after ''consultants.''

The Committee received two comments on subsection 900.120. The first urged that the 30-day time period be reduced to 14 days. The Committee did not agree with this change. The second comment recommended inserting the word ''shall'' in place of ''will'' and inserting ''By registered mail with return receipt in order to document mailing after notify.'' This language was adopted.

The Committee received eight comments on subsection 900.121 of the NPRM. Six suggested inserting the word ''each'' before the word ''phase,'' requiring the Secretary to notify Indian tribes and tribal organizations before each phase. One comment proposed adding the following language: ''Failure of the tribe or tribal organization to notify the Secretary within 45 days after receiving Secretarial notice described in § 900.120 shall not serve as a bar to the applicant tribe or tribal organization from contracting for the desired project.'' Although the proposed language accurately reflects a Comptroller General's Opinion, the Committee did not agree to this addition. To resolve the impasse, the Committee struck subsection 900.121 in its entirety.

Eight comments suggested adding language to § 900.121 to clarify who will be solicited and how. The committee took no action on these suggestions.

Three comments stated that section 105(m) of the Act establishes a

negotiation process to be invoked at the tribes' option, and section 105(m) language should be reflected in subsection 900.122 rather than imposing a mandatory process that may not be applicable in all situations. The regulation will be interpreted consistently with the applicable statutory provisions. The reference ''in accordance with section 900.121(a)'' was stricken since § 900.121 was in its entirety. One comment suggested changing ''will'' to ''shall'' after ''Secretary'' in § 900.122(a). This change was adopted.

Eight comments stated that the language of this section should be changed to mirror the requirements found at § 900.29. The Committee took no action on these comments. One comment suggested adding ''and provide all documents relied on in making the declination decision'' at § 900.123(b)(1) after the words ''in writing.'' The Committee agreed to this language with the addition after the word ''decision'' of ''within 20 days of such decision.'' The Committee did not agree to the proposed addition of subsection 900.124(b)(1)(I): ''The Secretary shall be barred from relying on any and all such documents which are not provided in any defense of this declination decision.'' The regulation therefore does not address what the Secretary may or may not rely upon, leaving such matters for decision by administrative bodies or the courts.

Three comments on § 900.124 stated that the requirements for grants are not clear. The Committee took no action.

Five comments raised the issue of the applicability of the Contract Work Hours Act. The Committee agreed that the applicability of the Contract Work Hours Act and other laws is adequately addressed in § 900.125(d). Accordingly, the reference to the Contract Work Hours Act at § 900.125(c)(4) was deleted.

One comment stated that § 900.125(c)(1) requires the contract to state that the tribal contractor will not alter title to real property ''without permission and instructions from the awarding Agency'' and is, therefore, inconsistent with section 105(f) of the Act, which states that title to property furnished by the Federal government for a contracted program ''shall, unless otherwise requested by the tribe or tribal organization, vest in the appropriate tribe or tribal organization.'' The Committee adopted ''elects not to take title (pursuant to Subpart I) to Federal property used in carrying out the contract'' at § 900.125(c)(1) after the word ''organization.'' The Committee also struck the language ''proposes to use Federal property in carrying out the contract.''

One comment stated that ''engineers'' should be deleted at § 900.126(a)(1) and § 900.130(c)(1) because the Act does not require the use of licensed engineers, only architects. The comment was adopted and the word ''engineers'' was deleted from those sections.

One comment suggested that § 900.125(a)(8) be expanded to include the following language after the word ''manuals'': ''and the Secretary shall accept tribal proposals for alternatives which are consistent with or exceed Federal guidelines or manuals applicable to construction programs.'' The Committee adopted this language.

One comment stated that § 900.125(b)(8) was overreaching and required production of information that the Federal government had no legitimate need to know. The Committee compromised by agreeing to strike the language as written and to substitute the following: ''(8) Identify if the tribe or tribal organization has a CMS contract related to this project,'' and added after the word ''section'' at § 900.125(b)(4) ''and minimum staff qualifications proposed by the tribe or tribal organization, if any.''

One comment proposed adding language at § 900.125(d) which would include tribal laws, ordinances and resolutions. The Committee agreed and added the sentence ''The parties will make a good faith effort to identify tribal laws, ordinances and resolutions which may affect either party in the performance of the contract.''

Three comments questioned the applicability of § 900.126 to cost reimbursement, fixed-price and non-construction contract construction activities. The Committee took no action.

Ten comments proposed changes to the provision on contingency funds. Four suggested the following language: ''the amount of the contingency provided shall be 10 percent of the contingency funds, whichever is greater.'' Two comments proposed that 100 percent of the available contingency should be open for negotiation and one comment advocated that 100 percent of the available contingency should be included in the contract. The comments proposed alternative language: ''* * * allow all of the contingency funds to be transferred to the tribe unless the government could show proof as to why such funds should not be transferred.'' The Committee compromised on the following language: ''The amount of the contingency provided shall be 3 percent of activities being contracted or 50 percent of the available contingency funds, whichever is greater.'' Additionally, the following sentence was added to address concerns regarding funding: ''In the event provision of required contingency funds will cause the project to exceed available project funds, the discrepancy shall be reconciled in accordance with § 900.129(e).''

One comment objected to the term ''contract budget,'' and urged the language be changed to ''funding proposal.'' The Committee took no action, and noted that the present language was written to accommodate redistribution of funds within the budget.

One comment stated that the ''fair and reasonable'' language at § 900.127(a) ''gives too much discretion to government officials to determine what is fair and reasonable.'' The Committee adopted the reference to § 900.129 at the end of § 900.127(a).

Three comments raised the question of the applicability of § 900.128 to cost reimbursement, fixed-price, and non-construction contract construction activities. The Committee took no action on this concern, but to clarify changes made at § 900.127(e)(8), the following language at § 900.128(d)(3): ''including but not limited to contingency.''

Seven comments stated that § 900.129(e)(1) should be amended to reflect that only the amount in excess of the available amount may be declined. The Committee decided not to make the recommended change, but did adopt the following language after the word ''Act'' at § 900.129(e)(1): ''or, if the contract has been awarded, dispute the matter under the Contract Disputes Act.''

One comment urged that § 900.129(e)(2)(i) ''should be modified to expressly authorize the parties to jointly agree on a lump-sum advance payment to generate earned interest, in order to bridge the gap between a fair and reasonable price and the amount available to the Secretary.'' The Committee added the phrase ''advance payments in accordance with section 900.132'' at § 900.129(e)(2)(i) after ''contingency funds.''

Three comments raised the applicability of § 900.129 to cost reimbursement, fixed-price, and non-construction contract construction activities. The Committee took no action.

Five comments stated that architect and engineer services were appropriate at the design phase (§ 900.130(b)(1)) but not required at the construction phase and should be deleted. One comment addressed the language requiring licensed engineers at §§ 900.130(b)(1) and (c)(1). The Committee struck ''and

engineers'' in both places, and inserted the word ''as'' before ''needed.''

Three comments stated that language at § 900.130(c)(5) should be changed to read: ''The tribe or tribal organization may not issue a change order which is outside the general scope of work defined in the contract or which exceeds the contract budget including contingency funds without Secretarial approval.'' The Committee took no action.

One comment argued that the timing of the independent cost estimate should be clarified to facilitate negotiations. The Committee took no action.

Three comments raised the applicability of § 900.130 to cost-reimbursement, fixed-price and non-construction contract construction activities. The Committee took no action.

One comment proposed that § 900.130(b)(5) should delete the Secretarial approval and substitute ''review and provide written comments.'' In compromise, the Committee adopted language which allows for Secretarial review and written comments on the project plans and specifications only at the concept phase, the schematic (or preliminary design) phase, the design development phase, and the final construction documents phase, and Secretarial approval of the project plans and specifications for general compliance with contract requirements only at the schematic (or preliminary design) phase and the final construction documents phase, or as otherwise negotiated.

One comment proposed replacing the word ''shall'' at § 900.130(b)(8) with ''may,'' and striking the last sentence requiring production of copies of contracts and subcontracts. In compromise, the Committee struck the following language: ''of contracts and major subcontracts and modifications * * * and A/E service deliverables.'' At the end of the first sentence of § 900.130(b)(8) the Committee adopted the following language: ''including but not limited to descriptions of contracts, major subcontracts and modifications implemented during the report period and A/E service deliverables.''

The Committee struck the following language at § 900.130(c)(7)(ii): ''of change orders, contracts and major subcontracts'' and inserted at § 900.130(c)(8) ''contracts, major subcontracts, modifications.''

One comment argued that § 900.130(e) should require the Secretary to act ''within 30 days or as negotiated between and agreed to by the parties.'' Another comment suggested that the word ''sufficient'' replace ''additional'' before''funds are awarded.'' The Committee took no action on the first comment and adopted the word ''sufficient'' in addition to, rather than in lieu of, ''additional.''

Six comments urged that § 900.131(b)(7) be rewritten as follows: ''The tribe or tribal organization may not issue a change order which is outside the general scope of work defined in the contract or which exceeds the contract budget including contingency funds without Secretarial approval.'' The Committee took no action.

Eight comments recommended the deletion of § 900.131(b)(11)(i)(A), stating that this section takes authority from an Indian tribe when the tribe is acting as the contracting officer for its subcontracts. The Committee took no action.

Eight comments suggested that overhead costs should be included at § 900.131(b)(11)(i)(D)(iii). The Committee adopted the language ''including but not limited to overhead costs'' before ''reasonable costs.''

One comment stated that the Secretary's role under § 900.131 generally should be substantially narrower. Specifically, the comment stated:

> The Secretary should not have final approval authority over planning documents once a contract is set for planning activities, the Secretary should not retain final approval authority for general compliance with contract requirements, and the Secretary should not be able to decline acceptance of the constructed building or facility. The Secretary should instead be limited to monitoring contract performance and to invoking such remedies as may be available to the Secretary under the Contract Disputes Act or under other provisions of the Self-Determination Act.

The Committee adopted compromise language on this issue at § 900.130(b)(5).

One comment stated that the independent cost estimate described at § 900.131(b)4) is a fully contractible function and the report should be shared with both parties. The Committee took no action on this comment.

One comment urged that § 900.131(b)(11)(i)(B) is unacceptable because it allows the Secretary subjective discretion to determine what is ''materially non-compliant work,'' The Committee took no action on this comment.

Three comments questioned the applicability of § 900.131 to cost-reimbursement, fixed-price and non-construction contract construction activities. The Committee took no action on those comments.

One comment proposed eliminating the Secretarial approval function at § 900.131(b)(1) and inserting the word ''maximum'' before the words ''tribal participation.'' The Committee adopted the word ''comment'' before ''and approval functions'' and ''full'' before ''tribal participation.'' The Committee also adopted the words ''in writing'' with regard to Secretarial notification of any concerns or issues that may lead to disapproval and the words ''and documents'' after ''relevant information.'' The Committee struck the language ''accommodate tribal recommendations'' and inserted ''resolve all issues and concerns of the tribe or tribal organization'' after the words ''good faith effort to.'' The Committee added ''appropriate'' before the word ''Secretary'' at § 900.131(b)(2).

One comment proposed changing § 900.131(b)(4) to read ''Secretary may rely on the Indian tribe's or tribal organization's cost estimate or the Secretary may'' obtain an independent government cost estimate that is derived from the final project plans and specifications, striking the balance of the sentence. The Committee adopted this comment and, after ''tribal organization,'' added the following: ''and shall provide all supporting documentation of the independent cost estimate to the tribe or tribal organization within the 90-day time limit.''

One comment proposed to strike ''approve'' at § 900.131(b)(5) and insert ''provide written comments.'' The Committee adopted the following language after ''the Secretary shall have the authority to review'': ''for general compliance with the contract requirements and provide written comments on,'' and struck ''approve for general compliance with contract requirements.'' After ''final construction documents phase,'' the Committee also added ''and approve for general compliance with contract requirements the project plans specifications only at the schematic phase and final construction documents phase.''

One comment argued that § 900.131(b)(9) be deleted and the following substituted: ''The Secretary shall be limited to the number of on-site monitoring visits negotiated between and agreed upon by the parties.'' The Committee achieved consensus by striking ''retains the right to'' and inserting ''may'' after ''the Secretary.''

In response to a comment regarding § 900.131(b)(1)(iii), the Committee inserted ''including but not limited to overhead costs.''

One comment proposed an additional subsection at § 900.131(b)(13)(vi) to read: ''The Indian tribe or tribal organization shall be compensated for

reasonable costs incurred due to termination of the contract.'' The Committee adopted this comment.

One comment proposed adding ''No further approval or justifying documentation by the contractor shall be required before expenditure of funds'' to § 900.134. The Committee adopted this suggestion.

Two additional subsections to Subpart J were adopted by the Committee. One responds to tribal concerns regarding the short period of actual time available to engage in construction activities where weather is an issue. The second clarifies that tribal employment rights ordinances do apply to construction contracts and subcontracts.

The Committees received comments urging both approval and rejection of Subpart J as proposed. The Committee only considered comments which addressed a specific subsection and/or proposed language.

Construction management services: Of the comments received regarding the proposed rule for construction activities under Public Law 93–638, many were directed towards the definition of Construction Management Services (CMS) and Construction Project Management (CPM) contained as part of the rule. Indeed, one comment, representative of several Indian tribes, ''. . . objects to the excessively narrow definition of construction management services (§ 900.113(b)) in a fashion which unlawfully defeats the tribal right to contract for management services through an ordinary self-determination contract, contrary to section 4(m) of the Act.'' CMS is a management process for construction projects that in some instances can provide for project delivery. Several comments feel that the activities described in the definition of CPM should be considered CMS activities. The distinction is important in that the statute provides that self-determination contracts for CMS can be through the Section 108 Model Agreement and not through a self-determination construction contract (Subpart J) as the regulations require for conduct of CPM activities.

The statute does not provide a definition for CMS and efforts to develop a definition dominated Committee discussion through the regulation process. At the start of the negotiation process, discussion departed upon a path that quickly stalled in a quagmire of divided opinion as to the role, both appropriate and statutorily permissible, available to the Federal government in self-determination contracts involving construction. However, at no point was there any dispute between tribal or Federal representatives that a tribe can contract for all management functions of a construction contract. The dispute regarding this issue revolves around the contracting vehicle utilized—a self-determination contract versus a Section 108 Model Agreement—and not the contractibility of management functions. Consistent with the Federal argument for limited Federal involvement in construction projects was an unwavering view that a Model Agreement, invoked through provision CMS, could not be used to circumvent other provisions of the statute dealing with construction.

To move forward, the Committee set aside initial efforts to define roles and involvement, and instead focused on describing processes through which tribes could pursue construction activities. From these scenarios, much discussion ensued and the roles of each party developed. Through these efforts, the regulations evolved in a manner that provides for Indian tribes or tribal organizations to contract for a spectrum of responsibilities, ranging from oversight of Federal efforts to tribal responsibility for all aspects of the construction process, through multiple options of contracting methods. From the standpoint of the tribal representatives that actively and consistently participated throughout the negotiation process, the practical effect of the CMS definition is negligible towards the overall goal of increasing tribal control of the contracting process. The limit of the Federal involvement, as described in § 900.132 of the regulation, is a direct reflection of efforts to describe reasonable points of Federal involvement. Both tribal and Federal representatives of the Committee charged with developing the regulations agree that the end result reflects a lessening Federal involvement in and an increase of tribal control of the construction process through 638 contracting.

However, Federal and tribal committee members did not reach consensus on the definition of CMS. Tribal and federal representatives included this issue in their non-consensus reports. The tribal non-consensus position sought to eliminate the definition of ''construction project management'' and include a less restrictive definition of ''construction management services'' with conforming changes to the balance of Subpart J. Tribal representatives are of the view that these definitions inappropriately limit the scope of construction management activities which should be contractible outside Subpart J. They are further of the view that the precise contours of ''construction management services'' should be worked out on a case-by-case basis as tribes engage in negotiations with particular agencies over specific construction projects. Accordingly, the Departments did not change the definition of CPM.

While the Departments have given careful consideration to the views of the tribal representatives on this issue, they cannot accept the tribal proposal. The Departments are persuaded that, as a legal matter, the Act treats construction contracts governed by Subpart J differently from contracts for other activities which may be contracted using the model agreement in section 108 of the Act. The two definitions allow contracting under a section 108 model, agreement for certain administrative support, coordination, and monitoring activities. However, construction project design and construction activities (including day-to-day on site project management and administration) are appropriately contracted under Subpart J. Although the tribal representatives are of a different legal view, we believe that expanding the definition of ''construction management services'' so that construction projects may be conducted under a section 108 construction management agreement circumvents the statutory requirements for a construction contract between the government and the Indian tribe or tribal organization.

Subpart K—Waiver Procedures

Summary of Subpart

This subpart implements section 107(e) of the Act, which authorizes the Secretary to make exceptions to the regulations promulgated to implement the Act or to waive such regulations under certain circumstances. Section 107(e) of the Act provides that in reviewing waiver requests, the Secretary shall follow the time line, findings, assistance, hearing, and appeal procedures set forth in section 102 of the Act. Subpart K explains how an Indian tribe or tribal organization applies for a waiver, how the waiver request is processed, the applicable timeframes for approval or declination of waiver requests, and whether technical assistance is available. In addition, subpart K restates the declination criteria of section 102 of the Act, which apply to waiver requests, and specifies that a denial of a waiver request is appealable under subpart L of these regulations. Finally, subpart K implements section 107(b) of the Act by providing a process for a determination

by the Secretary that a law or regulation has been superseded by the provisions of the Indian Self-Determination Act, as amended.

Summary of Comments

Several comments indicated that the scope of Subpart K was unclear. Some argued that the scope should be narrowed to authorizing only waivers under Part 900, while others argued that it should be expanded to include other regulations as well. The language in § 900.140 has been redrafted to clarify that the statutory waiver authority in Section 107(e) of the Act is limited to regulations under this Part. It should be noted that the Secretary of the Interior has the reserved authority to waive other regulations in 25 CFR if permitted by law. *See* 25 CFR 1.2.

One comment asked whether the Secretary can delegate his or her authority to waive regulations to lower administrative levels. The Secretary does have such authority, but has not chosen to exercise it.

One comment recommended a modifying of the last sentence of § 900.143 to require a ''clear and convincing'' burden of proof on the Secretary where a waiver request is denied. This recommendation was rejected because it is different from the statutory burden of proof in Section 102(a)(2) of the Act.

One comment objected that the 90-day period in § 900.143 was too long, and recommended shortening it to 30 days. This recommendation was rejected because it is contrary to the 90-day time frame in Section 102(a)(2) of the Act. Section 107(e) of the Act specifically provides that the timeline in Section 102 of the Act applies to the review of waiver requests.

One comment asked whether waivers can be granted even if they are against the law. Although such a clarification is unnecessary in this regulation, the Secretary is not authorized to waive any provision of the Act that may be restated in these regulations.

One comment stated that § 900.146 should be amended to allow Indian tribes or tribal organizations the discretion to draw on expertise from other tribes and/or tribal organizations to meet their needs. To address this concern, § 900.146 was amended to cross-reference the provision of technical assistance under § 900.7.

One comment recommended the inclusion of an additional paragraph in § 900.148 requiring the Secretary to attach a list of all applicable Federal requirements to each contract. This suggestion was not adopted because any addition to the contract must be by mutual agreement of the parties pursuant to Section 108 of the Act.

The Office of Management and Budget (OMB) expressed concern about recognition of its ultimate responsibility for the approval of waivers of any principles contained in OMB cost circulars. Therefore, in reviewing waivers of any cost principles, OMB requests that the Secretary consult with OMB prior to approving any requests under Subpart K.

Subpart L—Appeals

Summary of Subpart

The advisory committee decided to develop substantive regulations governing appeals of pre-award decisions by Federal officials. This subpart does not govern appeals of post-award decisions subject to the Contract Disputes Act, since the provisions governing disputes under a contract can be found in subpart N of these regulations. Subpart L implements sections 102(b), 102(e), and 109 of the Act, as well as various other provisions requiring the Secretary to provide an administrative appeals process when making certain decisions under the Act. It provides a road map to the appeals process for Indian tribes and tribal organizations.

The regulation is divided in two parts: the first part concerns appeals from decisions relating to declination of a proposal, an amendment of a proposal, or a program redesign; non-emergency reassumption decisions; decisions to refuse to waive regulations under section 107(e) of the Act; disagreements over reporting requirements; decisions relating to mature status conversions; decisions relating to a request that a law or regulation has been superseded by the Act; and a catchall provision relating to any other preaward decisions, except Freedom of Information Act appeals and decisions relating to the award of discretionary grants under section 103 of the Act. The second part concerns decisions relating to emergency reassumptions under section 109 of the Act and decisions relating to suspension, withholding, or delay of payments under section 106(l) of the Act.

Subpart L allows for an informal conference to avoid more time-consuming and costly formal hearings, but delineates the appeal process available to Indian tribes and tribal organizations that are either unhappy with the results of the informal conference or who choose to bypass the informal process altogether. Subpart L also states that an Indian tribe or tribal organization may go directly to Federal district court rather than exhaust the administrative appeal process under this regulation.

Under the regulation, all appeals must be filed with the Interior Board of Indian Appeals. Hearings on the record are conducted by an Administrative Law Judge of the Department of the Interior's Office of Hearings and Appeals, Hearings Division, who renders a recommended decision. Objections to this recommended decision may be filed either with the Interior Board of Indian Appeals, if the case relates to a Department of the Interior decision, or with the Secretary for Health and Human Services, if the case relates to the Department of Health and Human Services.

The second part contains similar provisions concerning emergency reassumption and suspension decisions, but these decisions are treated separately because of the statutory requirement that a hearing on the record be held within ten days of the Secretary's notice of his or her intent to rescind and reassume a program immediately, or a notice of intent to suspend, withhold, or delay payment under a contract.

Summary of Comments

Several comments noted that the words ''you'' and ''your'' appear throughout this Subpart, rather than the words ''Indian tribe'' and ''tribal organization.'' Where appropriate, the words ''you'' and ''your'' have been replaced throughout this Subpart.

Pursuant to several comments, § 900.150 was amended by adding a new paragraph (j) subjecting decisions relating to requests for determination that a law or regulation has been superseded by the Act to the appeal procedures under this Subpart.

One comment objected to having IHS appeals go to the Interior Board of Indian Appeals (IBIA). This recommendation was not adopted because to have all appeals heard by a single administrative appeals body so that the Act and these regulations are uniformly interpreted by both Departments.

One comment recommended that Indian tribes should be required to go through the administrative appeal process before going to Federal district court. This recommendation was not adopted because Section 110 of the Act specifically authorizes direct access to Federal courts.

One comment recommended that there be a mandatory completion time of six months from the time an Indian tribe or tribal organization files a notice of appeal to the time for a final decision

from the IBIA. This recommendation was not adopted because there is no way for the IBIA to anticipate when all briefings, discovery extensions, and settlement discussions will be concluded. Flexibility needs to be maintained during this process. The regulation already includes time frames for the IBIA to render decisions once all required filings have been made. *See, e.g.,* § 900.167 and § 900.174.

One comment recommended enlarging the 30-day period in § 900.152 to 90 days. This recommendation was not adopted because § 900.159 already provides for an extension of time.

Several comments requested that § 900.152 be clarified to provide that Indian tribes may appeal decisions made by agencies of DHHS besides the IHS. This recommendation was adopted, and the question in § 900.152 was amended to reflect this clarification.

One comment suggested that § 900.155(b) be redrafted to define the words ''adequate representation'' and suggested that the section be redrafted so that the costs of the appeal are chargeable either to the contract, if the tribe prevails on the appeal, or to the tribe if the appeal is unsuccessful. These recommendations were not adopted. Federal agencies reserve the rights to determine what is adequate representation in specific cases. To force tribes to repay the expense of appeals either through a charge to the contract or through tribal funds would be unjust and would discourage appeals which are well taken.

Many comments objected to a provision in § 900.152 and § 900.156 which provides that ''the IBIA will determine whether you are entitled to a hearing.'' This sentence was deleted from these two sections. As pointed out in many comments, the standards governing these decisions are set forth in § 900.160.

Several comments objected to the certification requirement in § 900.158(d) because it is not a statutory requirement of the Act, and conflicts with the government-to-government relationship between tribes and U.S. Government. This recommendation was not adopted. The certification requirements here are the same as in courts and other administrative appeal forums. The purpose of the requirement is simply to ensure that the deciding official has been informed that his/her decision has been appealed, and that the IBIA be informed of this notification. It is not intended to be a burdensome requirement, but merely a certification that is obtained for information purposes.

Pursuant to a comment, the words ''good reason'' in § 900.159 were changed to the words ''valid reason.''

One comment recommended deletion of § 900.159 because any request for an extension should be made within the 30-day time frame in § 900.158. This recommendation was not adopted because, although a matter of considerable debate during the Committee's negotiations, it was agreed that there could be extenuating circumstances that could prevent a Indian tribe or tribal organization from filing its notice of appeal within the 30-day time frame in § 900.158.

One comment sought clarification of what happens if the IBIA determines not to grant an extension. If the IBIA determines that the appellant does not have a valid reason to extend the deadline, and the tribe disagrees with this determination, it can appeal that decision to Federal District Court pursuant to Section 110 of the Act.

Section 900.160(a) was restructured into two sentences for clarification purposes. The second sentence of § 900.160 now begins with the words ''[i]f so.

One comment recommended changing the 15-day time frame in § 900.161(b) to a longer period. This recommendation was not adopted because it is the Committee's belief that the time frame is adequate to hold a pre-hearing conference.

Several comments suggested that § 900.163 be amended to impose a clear and convincing evidence burden of proof on the Secretary. This recommendation was rejected because it is different from the statutory burden of proof in Section 102(a)(2) of the Act.

Several comments recommended rewriting the question in § 900.163 to include all appealable issues. This recommendation was not adopted because the burden of proof is on the appellant to show by a preponderance of the evidence that the agency erred for issues under appeals in §§ 900.150(h), (i), and (j). This is consistent with the usual Administrative Procedure Act standard.

One comment objected to the agency which is one of the parties to the appeal making the final decision in § 900.167. The regulatory provision is consistent with the Act. Section 102(e)(2) of the Act provides that any decision which represents final agency action shall be made ''by an official of the Department who holds a position at a higher organizational level within the Department * * * than the agency * * * in which the decision was made'' or by an administrative judge.

Several comments noted that Subpart L does not address the statutory right of Indian tribes to recover attorney fees under the Equal Access to Justice Act (EAJA). In response to these comments, a new section was added at the end of Subpart L clarifying that EAJA applies to administrative appeals under this Subpart, and cross-referencing the appropriate EAJA regulations.

Subpart M—Federal Tort Claims Act Coverage

Summary of Subpart

Coverage of the Federal Tort Claims Act (FTCA) has been extended to Indian tribes, tribal organizations and Indian contractors carrying out contracts, grants, and cooperative agreements under the Act. This subpart explains which tort claims are covered by the FTCA and which tort claims are not covered by the FTCA, for both medical and non-medical related claims. It also provides for tribal assistance in giving notice of tort claims to the Federal agency involved, and in providing assistance during the administrative claim or litigation process.

Summary of Comments

Two comments stated that there should be no distinction between medical-related and non-medical-related functions under self-determination contracts for purposes of FTCA coverage, defense or payment. This comment was rejected because the medical provisions have a unique history grounded in the Public Health Service Act, and in Section 102(d) of the Act.

Several comments expressed concern that the proposed regulations lacked guidance regarding insurance. Insurance is beyond the scope of FTCA authority for these regulations.

Several comments stated that portions of this Subpart reflect a fundamental misunderstanding of the scope of the Federal government's obligation to defend and indemnify tribal contractors for non-tort claims and claims outside the contract. Another set of comments requested that § 900.183 be amended to explain that an Indian tribe or tribal organization may not be sued for claims beyond the scope of the FTCA arising out of the performance of self-determination contacts. In amending § 900.183, the Committee determined to narrow the scope of the regulation strictly to the remedial FTCA provisions of section 102(d) of the Act and section 314 of Public Law 101–512, as required by section 107(a)(1) of the Act. The Committee therefore chose not to address the extent to which Indian

tribes or tribal organizations are protected from suits on other claims, which is beyond the scope of these regulations.

One comment recommended that ''Indian contractor,'' as defined in § 900.181(a), should be expanded to include non-medical services as well as medical services. Although the Eighth Circuit Court of Appeals (see *FGS Constructors, Inc.* v. *Carlow,* 64 F.3d 1230) has interpreted this provision as applying only to health programs, § 900.181(a)(3) was added to reflect the desire of some Indian tribes to continue disputing the scope of this term.

One comment recommended deleting § 900.181(b) since ''contract'' is defined elsewhere. The comment was adopted.

One comment suggested clarifying § 900.183(a) by stating with specificity which tort claims are barred. The comment was adopted and this section was changed.

One comment recommended § 900.183(b) be amended by adding a new subsection including activities performed by an employee which are outside of the scope of employment. The comment was adopted.

One comment asked what law will be used to implement breach of contract claims and whether tribal contractors are subject to Federal employment statutes. The comment was rejected because this subject is beyond the scope of regulatory authority under section 107(a)(1) of the Act.

One comment questioned the reference to violations of the U.S. Constitution in § 900.183(b)(4). The provision was deleted. As sovereigns pre-existing the Constitution, Indian tribes have historically been regarded as unconstrained by those constitutional provisions framed specifically as limitations on Federal and state authority. See *Santa Clara Pueblo* v. *Martinez,* 436 U.S. 49, 56 (1978). To the extent applicable, 28 U.S.C. 2679(b)(2) continues to be relevant.

Several comments asked whether tribal law applied to tort claims. No change was made because state law applies to the determination of liability for tort claims under the FTCA.

One comment suggested amending § 900.188(c)(7) to add ''including Federal employees assigned to the contractor,'' after the word ''employees.'' The comment was adopted and the sentence re-written.

Two comments recommended that the notice requirements of 28 U.S.C. 2679(c) be referenced in § 900.188(b). Also, one comment suggested adding the same notice provision to § 900.203. The comments were adopted.

One comment recommended synchronizing § 900.206 with § 900.192 so that the list of employees covered for non-medical-related claims is the same as for medical-related claims. The comment was adopted.

Subpart N—Post-Award Contract Disputes

Summary of Subpart

Under section 110(d) of the Act, the Contract Disputes Act (CDA) applies to post-award contract claims. This subpart explains when a CDA claim can be filed, the contents of a claim, and where to file the claim. It also explains the difference in the handling of claims over $100,000 and those less than that amount.

Summary of Comments

Several comments recommended that language from the withdrawn 1994 NPRM regarding the application of the Equal Access to Justice Act be incorporated into the Subpart. The comments were adopted by adding § 900.216(c).

Several comments recommended adding paragraph 900.805(k) from the withdrawn 1994 NPRM regarding using accounting principles as ''guides'' rather ''rigid measures'' in IBCA appeals. The comments were adopted and a new section was added.

One comment was concerned that § 900.217 was silent regarding the Tribal Court system alternative for alternative disputes resolution. A change was made in § 900.217(b) to adopt this recommendation. Two comments indicated that § 900.217(b) needs to add the right of the tribe, if it desires, to file in Federal District Court or the Court of Federal Claims. This concern is already addressed in § 900.222.

Several comments recommended that § 900.220(b) be revised to read: ''supporting documents or data are accurate and complete to the best of the Indian tribe or tribal organization's knowledge and belief.'' The comments were adopted.

Two comments recommended that § 900.224 be amended so that delay of the awarding official in making a final decision should be treated as though the claim were approved, rather than denied. These comments were rejected because the existing language is statutory.

Several comments recommended adding the following language to § 900.227: ''If a decision is withdrawn and a new decision acceptable to the contractor is not issued, the contractor may proceed with the appeal based on the new decision or, if no new decision is issued, proceed under § 900.224.'' The comments were adopted and a new § 900.227(c) was added.

One comment expressed concern that § 900.230(a) requires an Indian tribe to keep performing its contract in spite of the possibility that the claim being appealed represents crucial operating funds from the contact. This is addressed by the limitation of cost clause of the model contract.

Subpart O—Conflicts of Interest

Summary of Subpart

Section 900.231 defines an organizational conflict of interest, and § 900.233 defines personal conflicts of interest which could affect self-determination contracts. The balance of the subpart advises Indian tribes what must be done in the event a conflict arises. The subpart also provides that Indian tribes may elect to negotiate specific conflicts provisions on a contract-by-contract basis.

Summary of Comments

The area of conflict of interests—where an Indian tribe or tribal organization's and/or their employees' administrations of a self-determination contract affecting allottees and others could be impaired by financial bias—raises difficult questions for DOI, including the proper balance between the Federal-tribal government-to-government relationship and the Secretary's mandated trust responsibility. Additional issues include the degree of monitoring required for conflicts, if any, where the United States contracts with Indian tribes to perform duties that directly affect the statutory rights of third parties. In attempting to reconcile these difficult questions, the DOI has opted for an approach that seeks to minimize intrusion and burden to Indian tribes and tribal organizations, yet provides for a degree of accountability where conflicts arise.

The Committee reached consensus on a personal conflict of interest provision in the procurement management standards in Subpart F. The Federal committee members believed this section should be supplemented by a regulation addressing conflicts of the Indian tribe or tribal organization itself and conflicts of individual employees involved in trust resource management. These regulations appear in Subpart O of the final regulation and only apply to contracts awarded by the DOI.

Several comments on the NPRM noted that no provision on conflicts of interest has previously been adopted in the 20 years of contracting trust

programs. The need to address the conflicts issue in some form has become more apparent as the DOI's experience with 638 contracts has increased.

Some comments assert that excellent tribal track records make it clear that no federal regulation is necessary. Several other comments state that the NPRM proposal suggests that in the absence of regulation Indian tribes will engage in fraudulent actions. The DOI does not contend that there is a widespread problem of unmitigated conflicts of interest. Rather it is adopting the rule in recognition of its responsibility as trustee to ensure that in a trust relationship, the acts of its agents are in accordance with high fiduciary standards. Therefore, the rule is intended to protect trust beneficiaries. Because the regulation only requires an Indian tribe or tribal organization to provide notice in the case of an organizational conflicts of interest, compliance should not be burdensome.

Several comments stated that any potential conflict between a tribe and allottees is no different than any other relationship between a government and its citizens, where a government uses its own employees to value private land to be condemned for government purposes. Several other comments state the NPRM's ''organizational conflict'' proposal was vague and nonsensical since the United States retains a residual component (such as lease approval or taking fee land into trust status) which gives the DOI ample opportunity to protect the interests of the United States. A related comment stated that this proposal appeared to pass on to Indian tribes the costs of the federal government's continuing responsibilities as trustee, constituting an unauthorized failure to perform non-delegable functions.

The final regulations do address organizational conflicts, because there is a significant difference between the obligation of a trustee to a beneficiary and that of a government to a citizen. In response to these comments, the DOI significantly altered the organizational conflicts regulation from the NPRM. First, the final regulation clearly states that it only applies when the contract affects the interests of allottees, trust resources or statutory obligations to third parties. Second, the Indian tribe or tribal organization is only required to provide notice to the federal government when such a situation arises, that is not already covered in their 638 contract.

Several Indian tribes commented that Federal regulations must not dictate internal tribal operations in the area of personal conflicts of interest. Some of them acknowledge that the federal proposal would not be particularly burdensome, but state that it is inconsistent with the federal policy of Indian self-determination.

The personal conflict of interest provisions are narrowly drawn to cover only trust programs. While there is a strong federal policy of Indian self-determination, there is also a strong federal policy of strict adherence to the trust responsibilities arising from treaty and statute. The self-determination statute does not sever the fiduciary relationship between the United States and Indian trust beneficiaries. For this reason the ethical standards involved are not solely an internal tribal concern.

One comment recommended reliance on tribal codes, supplemented by negotiated contract provisions, to protect against personal conflicts of interest. The comment analogized the federal proposal to unsatisfactory past experiences with BIA ''model codes.''

The rule accommodates tribal codes and negotiated contract provisions, that the Department agrees would be the ideal manner in which to address conflicts. However it also provides a rule to apply in the absence of tribal code or contract terms that adequately protect trust beneficiaries from conflicts of interest.

Several comments agree that regulations should address the problem of conflicts of interest arising from familial relations, organizational relations where elected officials also serve in programmatic capacities, and financial relations. These comments suggest that Indian tribes be authorized to employ their own written codes of standards of conducts. Until the Secretary approves such codes, the comments suggest terms that should apply that draw upon standards applicable to federal employees and other government contractors.

The Department agrees that regulations are needed and has provided in § 900.236 that it will negotiate conflicts provisions in contracts, to displace these regulations if there is agreement to provide equivalent protection to these regulations. The Department's regulations focus solely on financial interests, and not familial and organizational relations, believing that the latter is more susceptible to internal tribal regulation. Because of concerns about tribal sovereignty, the final regulation does not require Departmental approval of tribal codes, except as agreed to in individual contract negotiations.

Some comments described the proposal in the NPRM as presenting micro-management opportunities for federal agency personnel inconsistent with a government-to-government relationship. To avoid micro-management, the final rule was modified, in the case of organizational conflicts, to require only notice to the DOI when and Indian tribe or tribal organization learns of the existence of a conflict. No mitigation plan, as proposed in the 1996 NPRM, is required. The personal conflicts regulation only requires the Indian tribe to address the conflict in a manner that enables the Department to meet its trust responsibilities.

Some comments recommended that Indian tribes and the DOI rely on contract-by-contract negotiations for addressing conflicts provision. As mentioned earlier, because of the trust and legal responsibilities of the Department, the regulations are necessary to address situations where terms cannot be negotiated in the short time permitted for negotiation.

Several Indian tribes commented that the Government does not similarly regulate its own actions, and consult with Indian tribes concerning conflicts with actions proposed on allottee properties. The DOI agrees that consultations is appropriate, but recognized that it has a very high duty to assure that actions taken with respect to allottee properties are consistent with its fiduciary responsibilities to those allottees. The rule does not require consultation with allottees on actions concerning tribal lands, or vice versa.

One comment written on behalf of several individual owners of trust resources, strongly supported the adoption of minimum standards to assure the integrity of the performance and administration of trust resources. The comment suggests that, at a minimum trust resources be subject to the same conflict standards applied to procurement in the proposed § 900.48.

The final rule is very similar to the agreed provisions in § 900.48.

Subpart P—Retrocession and Reassumption Procedures

Summary of Subpart

Section 107(a)(1) of the Act authorizes the Secretaries to promulgate regulations governing retrocession and reassumption procedures. Sections 900.240 through 900.245 define retrocession, what entities are entitled to retrocede, tribal rights for contracting and funding as a result of retrocession, and tribal obligations regarding the return of property to the Secretary after retrocession.

Sections 900.246 through 900.256 explain what is meant by reassumption,

the two types of reassumption authorized under the Act, necessary circumstances when using emergency and non-emergency reassumption authority, and Secretarial responsibilities, including detailed written notice requirements when reassumption is invoked. The subpart describes a number of activities after reassumption has been completed, such as authorization for ''wind up'' costs, tribal obligations regarding the return of property to the Secretary, and a funding reduction protection.

Summary of Comments

One comment recommended that the phrase ''may retrocede a contract'' be added to the end of the answer in § 900.232 to provide a more complete answer to the question of who may retrocede a contract. This suggestion adds clarity to the answer, and has been adopted.

Several comments recommended that an additional question and answer be added to address when a retrocession becomes effective. The recommended language is contained in the Act, provides meaningful information to the users of this regulation, and has been adopted and inserted as a new § 900.233.

Several comments recommended that the term ''fair market'' be added to the answer in § 900.236 and § 900.246 in describing the value of property to be returned to the Secretary in the event of a retrocession or reassumption. While the essence of this recommendation has been adopted, to remain consistent throughout the regulation the definition of ''fair market'' as provided in Subpart I will be restated in this Subpart. (Subpart I states ''current fair market value, less the cost of improvements borne by the Indian tribe or tribal organization in excess of $5,000.'') Also, for clarity the word ''requested'' has been added to the answer in § 900.236 in describing property to be returned to the Secretary.

One comment recommended that the answer provided in § 900.238, which has (a) and (b) components, be reversed to track the order of the question and avoid confusion. This recommendation has been adopted to promote uniformity in this question and answer.

A comment recommended language be added to the answer in § 900.239 incorporating the option for the award of grants to Indian tribes from the Secretary for technical assistance to overcome non-emergency deficiencies. While the exact language suggested is not used, the recommendation has been adopted since such grants are authorized under the Act.

Several comments recommended that language be added to § 900.238(b)(1) dealing with the conditions for emergency reassumptions. These comments were not adopted because the language now contained in § 900.238(b)(1) precisely tracks the Act and the suggested additional language may confuse statutory intent.

One comment recommended that a statement be added to § 900.242 that the Secretary will not rescind a contract until there is a final decision in any administrative hearing or appeal on a non-emergency reassumption. This recommendation has been adopted.

Internal Agency Procedures

The Departments' position is that a comprehensive manual for the internal management of self-determination contracts should not be developed through the formal rulemaking process. Internal agency procedures are more appropriately developed outside the negotiated rulemaking process, to allow flexibility in addressing practical considerations which arise in the field, and to allow maximum participation from those agency officials who bear much of the responsibility for implementing the Act to its fullest capability. The Federal position supports a joint tribal and Federal commitment to work together to generate a procedural manual which will promote the purposes underlying the Indian Self-Determination Act and facilitate contracting by Indian tribes and tribal organizations.

One goal of the full committee is to have uniform procedures for the implementation and interpretation of the act and these regulations which apply to all Federal agencies which administer contracted programs. The Federal members of the committee propose that the parties formally agree to work together to develop a manual which guides all contracting agencies through the contracting process. This is consistent with the position taken by the work group charged with making recommendations regarding internal agency procedures.

To that end, Federal committee members would commit to a firm time line within which to produce a manual.

Administrative Matters

This rule is a significant regulatory action Executive Order 12866 and requires review by the Office of Management and Budget.

The Departments certify that this rule will not have significant economic effects on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

In accordance with Executive Order 12630 the Department of the Interior and the Department of Health and Human Services have determined that this regulation does not have significant takings implications. The rule does not pertain to the taking of private property interests, nor does it have an effect on private property.

The Department of the Interior and the Department of Health and Human Services have determined that this rule does not have significant Federalism effects under Executive Order 12612 and will not interfere with the roles, rights, and responsibilities of states.

The Departments of the Interior and Health and Human Services have determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental policy Act of 1969.

This rule imposes no unfunded mandates on any governmental or private entity in excess of $100 million annually and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Paperwork Reduction Act of 1995

The Office of Management and Budget has approved, under 44 U.S.C. chapter 35, the information collection requirements in part 900 under assigned control number 1076–0136. The information for part 900 is being collected and used by the Departments to determine applicant eligibility, evaluate applicant capabilities, protect the service population, safeguard Federal funds and other resources, and permit the Departments to administer and evaluate contract programs.

The Departments estimate that the average burden of complying with the collection, broken down by subpart, will be as follows: Subpart C (Contract Proposal Contents), 222 hours; Subpart F (Standards for Tribal or Tribal Organization Management Systems), 250 hours; Subpart G (Programmatic Reports and Data Requirements), 150 hours; Subpart I (Property Donation Procedures), 10 hours; Subpart J (Construction), 564 hours; Subpart K (Waiver Procedures), 10 hours; and Subpart L (Appeals), 40 hours.

Responses to the collection of information under this regulation are required in order for Indian tribes or tribal organizations to obtain or retain benefits under the Act. However, not every tribal contractor will need to respond to each request for information contained in the regulation, as some of the requests pertain to specific

situations or to certain types of self-determination contracts. Moreover, under section 5(f)(2) of the Act, tribal organizations are given authority to negotiate their individual reporting requirements with the Secretary on a contract-by-contract basis. Any disagreements over reporting requirements are subject to the declination criteria and procedures in section 102 of the Act and subpart E of the regulation.

There is no assurance of confidentiality provided to respondents concerning this information collection.

The Departments may not conduct or sponsor a collection of information, nor are Indian tribes or tribal organizations or other persons required to respond to such collections unless the Departments display a currently valid OMB control number.

List of Subjects in 25 CFR Part 900

Indians; Administrative practice and procedure, Buildings and facilities, Claims, Government contracts, Grant programs—Indians, Health care, Indians—business and finance, Government property management.

For the reasons given in the preamble, the Departments of the Interior and Health and Human Services hereby establish a new part 900 in chapter V of title 25 of the Code of Federal Regulations as set forth below.

Dated: June 14, 1996.

Bruce Babbitt,

Secretary of the Interior.

Dated: June 13, 1996.

Donna Shalala,

Secretary of Health and Human Services.

CHAPTER V—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, AND INDIAN HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

PART 900—CONTRACTS UNDER THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

Subpart A—General Provisions

Sec.

Subpart B—Definitions

Subpart C—Contract Proposal Contents

Subpart D—Review and Approval of Contract Proposals

Subpart E—Declination Procedures

Subpart F—Standards for Tribal or Tribal Organization Management Systems

General

Standards for Financial Management Systems

Authority: 25 U.S.C. 450f et seq.

Subpart A—General Provisions

§ 900.1 Authority.

These regulations are prepared, issued, and maintained jointly by the Secretary of Health and Human Services and the Secretary of the Interior, with the active participation and representation of Indian tribes, tribal organizations, and individual tribal members pursuant to the guidance of the Negotiated Rulemaking procedures required by section 107 of the Indian Self-Determination and Education Assistance Act.

§ 900.2 Purpose and scope.

(a) *General.* These regulations codify uniform and consistent rules for contracts by the Department of Health and Human Services (DHHS) and the Department of the Interior (DOI) in implementing title I of the Indian Self-Determination and Education Assistance Act, Public Law 93–638, 25 U.S.C. 450 et seq., as amended and sections 1 through 9 preceding that title.

(b) *Programs funded by other Departments and agencies.* Included under this part are programs administered (under current or future law or interagency agreement) by the DHHS and the DOI for the benefit of Indians for which appropriations are made to other Federal agencies.

(c) *This part included in contracts by reference.* Each contract, including grants and cooperative agreements in lieu of contracts awarded under section 9 of the Act, shall include by reference the provisions of this part, and any amendment thereto, and they are binding on the Secretary and the contractor except as otherwise specifically authorized by a waiver under section 107(e) of the Act.

(d) *Freedom of Information.* Access to records maintained by the Secretary is governed by the Freedom of Information Act (5 U.S.C. 552) and other applicable

Federal law. Except for previously provided copies of tribal records that the Secretary demonstrates are clearly required to be maintained as part of the record keeping systems of the DHHS or the DOI, or both, records of the contractors (including archived records) shall not be considered Federal records for the purpose of the Freedom of Information Act. The Freedom of Information Act does not apply to records maintained solely by Indian tribes and tribal organizations.

(e) *Privacy Act.* Section 108(b) of the Indian Self-Determination Act states that records of the tribal government or tribal organizations shall not be considered Federal records for the purposes of the Privacy Act.

(f) *Information Collection*. The Office of Management and Budget has approved, under 44 U.S.C. chapter 35, the information collection requirements in Part 900 under assigned control number 1076–0136. The information for Part 900 is being collected and used by the Departments to determine applicant eligibility, evaluate applicant capabilities, protect the service population, safeguard Federal funds and other resources, and permit the Departments to administer and evaluate contract programs.

§ 900.3 Policy statements.

(a) Congressional policy.

(1) Congress has recognized the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction, planning, conduct and administration of educational as well as other Federal programs and services to Indian communities so as to render such programs and services more responsive to the needs and desires of those communities.

(2) Congress has declared its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services. In accordance with this policy, the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities.

(3) Congress has declared that a major national goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

(4) Congress has declared that the programs, functions, services, or activities that are contracted and funded under this Act shall include administrative functions of the Department of the Interior and the Department of Health and Human Services (whichever is applicable) that support the delivery of services to Indians, including those administrative activities supportive of, but not included as part of, the service delivery programs described in this paragraph that are otherwise contractible. The administrative functions referred to in the preceding sentence shall be contractible without regard to the organizational level within the Department that carries out such functions. Contracting of the administrative functions described herein shall not be construed to limit or reduce in any way the funding for any program, function, service, or activity serving any other tribe under the Act or any other law. The Secretary is not required to reduce funding for programs, projects, or activities serving a tribe to make funds available to another Indian tribe or tribal organization under this Act.

(5) Congress has further declared that each provision of the Act and each provision of contracts entered into thereunder shall be liberally construed for the benefit of the tribes or tribal organizations to transfer the funding and the related functions, services, activities, and programs (or portions thereof), that are otherwise contractible under the Act, including all related administrative functions, from the Federal government to the contractor.

(6) Congress has declared that one of the primary goals of the 1994 amendments to the Act was to minimize the reporting requirements applicable to tribal contractors and to eliminate excessive and burdensome reporting requirements. Reporting requirements over and above the annual audit report are to be negotiated with disagreements subject to the declination procedures of section 102 of the Act.

(7) Congress has declared that there not be any threshold issues which would avoid the declination, contract review, approval, and appeal process.

(8) Congress has declared that all self-determination contract proposals must be supported by the resolution of an Indian tribe(s).

(9) Congress has declared that to the extent that programs, functions, services, and activities carried out by tribes and tribal organizations pursuant to contracts entered into under this Act reduce the administrative or other responsibilities of the Secretary with respect to the operation of Indian programs and result in savings that have not otherwise been included in the amount of contract funds determined under Section 106(a) of the Act, the Secretary shall make such savings available for the provision of additional services to program beneficiaries, either directly or through contractors, in a manner equitable to both direct and contracted programs.

(b) *Secretarial policy.* (1) It is the policy of the Secretary to facilitate the efforts of Indian tribes and tribal organizations to plan, conduct and administer programs, functions, services and activities, or portions thereof, which the Departments are authorized to administer for the benefit of Indians because of their status as Indians. The Secretary shall make best efforts to remove any obstacles which might hinder Indian tribes and tribal organizations including obstacles that hinder tribal autonomy and flexibility in the administration of such programs.

(2) It is the policy of the Secretary to encourage Indian tribes and tribal organizations to become increasingly knowledgeable about the Departments' programs administered for the benefit of Indians by providing information on such programs, functions and activities and the opportunities Indian tribes have regarding them.

(3) It is the policy of the Secretary to provide a uniform and consistent set of rules for contracts under the Act. The rules contained herein are designed to facilitate and encourage Indian tribes to participate in the planning, conduct, and administration of those Federal programs serving Indian people. The Secretary shall afford Indian tribes and tribal organizations the flexibility, information, and discretion necessary to design contractible programs to meet the needs of their communities consistent with their diverse demographic, geographic, economic, cultural, health, social, religious and institutional needs.

(4) The Secretary recognizes that contracting under the Act is an exercise by Indian tribes of the government-to-government relationship between the United States and the Indian tribes. When an Indian tribe contracts, there is a transfer of the responsibility with the

associated funding. The tribal contractor is accountable for managing the day-to-day operations of the contracted Federal programs, functions, services, and activities. The contracting tribe thereby accepts the responsibility and accountability to the beneficiaries under the contract with respect to use of the funds and the satisfactory performance of the programs, functions, services and activities funded under the contract. The Secretary will continue to discharge the trust responsibilities to protect and conserve the trust resources of Indian tribes and the trust resources of individual Indians.

(5) The Secretary recognizes that tribal decisions to contract or not to contract are equal expressions of self-determination.

(6) The Secretary shall maintain consultation with tribal governments and tribal organizations in the Secretary's budget process relating to programs, functions, services and activities subject to the Act. In addition, on an annual basis, the Secretary shall consult with, and solicit the participation of, Indian tribes and tribal organizations in the development of the budget for the Indian Health Service and the Bureau of Indian Affairs (including participation of Indian tribes and tribal organizations in formulating annual budget requests that the Secretary submits to the President for submission to Congress pursuant to section 1105 of title 31, United States Code).

(7) The Secretary is committed to implementing and fully supporting the policy of Indian self-determination by recognizing and supporting the many positive and successful efforts and directions of tribal governments and extending the applicability of this policy to all operational components within the Department. By fully extending Indian self-determination contracting to all operational components within the Department having programs or portions of programs for the benefit of Indians under section 102(a)(1) (A) through (D) and for the benefit of Indians because of their status as Indians under section 102(a)(1)(E), it is the Secretary's intent to support and assist Indian tribes in the development of strong and stable tribal governments capable of administering quality programs that meet the tribally determined needs and directions of their respective communities. It is also the policy of the Secretary to have all other operational components within the Department work cooperatively with tribal governments on a government-to-government basis so as to expedite the transition away from Federal domination of Indian programs and make the ideals of Indian self-government and self-determination a reality.

(8) It is the policy of the Secretary that the contractibility of programs under this Act should be encouraged. In this regard, Federal laws and regulations should be interpreted in a manner that will facilitate the inclusion of those programs or portions of those programs that are for the benefit of Indians under section 102(a)(1) (A) through (D) of the Act, and that are for the benefit of Indians because of their status of Indians under section 102(a)(1)(E) of the Act.

(9) It is the Secretary's policy that no later than upon receipt of a contract proposal under the Act (or written notice of an Indian tribe or tribal organization's intention to contract), the Secretary shall commence planning such administrative actions, including but not limited to transfers or reductions in force, transfers of property, and transfers of contractible functions, as may be necessary to ensure a timely transfer of responsibilities and funding to Indian tribes and tribal organizations.

(10) It is the policy of the Secretary to make available to Indian tribes and tribal organizations all administrative functions that may lawfully be contracted under the Act, employing methodologies consistent with the methodology employed with respect to such functions under titles III and IV of the Act.

(11) The Secretary's commitment to Indian self-determination requires that these regulations be liberally construed for the benefit of Indian tribes and tribal organizations to effectuate the strong Federal policy of self-determination and, further, that any ambiguities herein be construed in favor of the Indian tribe or tribal organization so as to facilitate and enable the transfer of services, programs, functions, and activities, or portions thereof, authorized by the Act.

§ 900.4 Effect on existing tribal rights.

Nothing in these regulations shall be construed as:

(a) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by Indian tribes;

(b) Terminating, waiving, modifying, or reducing the trust responsibility of the United States to the Indian tribe(s) or individual Indians. The Secretary shall act in good faith in upholding this trust responsibility;

(c) Mandating an Indian tribe to apply for a contract(s) or grant(s) as described in the Act; or

(d) Impeding awards by other Departments and agencies of the United States to Indian tribes to administer Indian programs under any other applicable law.

§ 900.5 Effect of these regulations on Federal program guidelines, manual, or policy directives.

Except as specifically provided in the Act, or as specified in Subpart J, an Indian tribe or tribal organization is not required to abide by any unpublished requirements such as program guidelines, manuals, or policy directives of the Secretary, unless otherwise agreed to by the Indian tribe or tribal organization and the Secretary, or otherwise required by law.

Subpart B—Definitions

§ 900.6 Definitions.

Unless otherwise provided in this Part:

Act means Secs. 1 through 9, and Title I of the Indian Self-Determination and Education Assistance Act of 1975, Public Law 93–638, as amended.

Annual funding agreement means a document that represents the negotiated agreement of the Secretary to fund, on an annual basis, the programs, services, activities and functions transferred to an Indian tribe or tribal organization under the Act.

Appeal means a request by an Indian tribe or tribal organization for an administrative review of an adverse Agency decision.

Awarding official means any person who by appointment or delegation in accordance with applicable regulations has the authority to enter into and administer contracts on behalf of the United States of America and make determinations and findings with respect thereto. Pursuant to the Act, this person can be any Federal official, including but not limited to, contracting officers.

BIA means the Bureau of Indian Affairs of the Department of the Interior.

Contract means a self-determination contract as defined in section 4(j) of the Act.

Contract appeals board means the Interior Board of Contract Appeals.

Contractor means an Indian tribe or tribal organization to which a contract has been awarded.

Days means calendar days; except where the last day of any time period specified in these regulations falls on a Saturday, Sunday, or a Federal holiday, the period shall carry over to the next business day unless otherwise prohibited by law.

Department(s) means the Department of Health and Human Services (HHS) or the Department of the Interior (DOI), or both.

IHS means the Indian Health Service of the Department of Health and Human Services.

Indian means a person who is a member of an Indian Tribe.

Indian tribe means any Indian tribe, band, nation, or other organized group, or community, including pueblos, rancherias, colonies and any Alaska Native Village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Indirect cost rate means the rate(s) arrived at through negotiation between an Indian tribe or tribal organization and the appropriate Federal Agency.

Indirect costs means costs incurred for a common or joint purpose benefiting more than one contract objective or which are not readily assignable to the contract objectives specifically benefitted without effort disproportionate to the results achieved.

Initial contract proposal means a proposal for programs, functions, services, or activities that the Secretary is authorized to perform but which the Indian tribe or tribal organization is not now carrying out.

Real property means any interest in land together with the improvements, structures, and fixtures and appurtenances thereto.

Reassumption means rescission, in whole or in part, of a contract and assuming or resuming control or operation of the contracted program by the Secretary without consent of the Indian tribe or tribal organization pursuant to the notice and other procedures set forth in Subpart P.

Retrocession means the voluntary return to the Secretary of a contracted program, in whole or in part, for any reason, before the expiration of the term of the contract.

Secretary means the Secretary of Health and Human Services (HHS) or the Secretary of the Interior (DOI), or both (and their respective delegates).

Tribal organization means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: provided, that, in any case where a contract is let or a grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant.

Trust resources means an interest in land, water, minerals, funds, or other assets or property which is held by the United States in trust for an Indian tribe or an individual Indian or which is held by an Indian tribe or Indian subject to a restriction on alienation imposed by the United States.

Subpart C—Contract Proposal Contents

§ 900.7 What technical assistance is available to assist in preparing an initial contract proposal?

The Secretary shall, upon request of an Indian tribe or tribal organization and subject to the availability of appropriations, provide technical assistance on a non-reimbursable basis to such Indian tribe or tribal organization to develop a new contract proposal or to provide for the assumption by the Indian tribe or tribal organization of any program, service, function, or activity (or portion thereof) that is contractible under the Act. The Secretary may also make a grant to an Indian tribe or tribal organization for the purpose of obtaining technical assistance, as provided in section 103 of the Act. An Indian tribe or tribal organization may also request reimbursement for pre-award costs for obtaining technical assistance under sections 106(a) (2) and (5) of the Act.

§ 900.8 What must an initial contract proposal contain?

An initial contract proposal must contain the following information:

(a) The full name, address and telephone number of the Indian tribe or tribal organization proposing the contract.

(b) If the tribal organization is not an Indian tribe, the proposal must also include:

(1) a copy of the tribal organization's organizational documents (e.g., charter, articles of incorporation, bylaws, etc.).

(2) The full name(s) of the Indian tribe(s) with which the tribal organization is affiliated.

(c) The full name(s) of the Indian tribe(s) proposed to be served.

(d) A copy of the authorizing resolution from the Indian tribe(s) to be served.

(1) If an Indian tribe or tribal organization proposes to serve a specified geographic area, it must provide authorizing resolution(s) from all Indian tribes located within the specific area it proposes to serve. However, no resolution is required from an Indian tribe located outside the area proposed to be served whose members reside within the proposed service area.

(2) If a currently effective authorizing resolution covering the scope of an initial contract proposal has already been provided to the agency receiving the proposal, a reference to that resolution.

(e) The name, title, and signature of the authorized representative of the Indian tribe or tribal organization submitting the contract proposal.

(f) The date of submission of the proposal.

(g) A brief statement of the programs, functions, services, or activities that the tribal organization proposes to perform, including:

(1) A description of the geographical service area, if applicable, to be served.

(2) The estimated number of Indian people who will receive the benefits or services under the proposed contract.

(3) An identification of any local, Area, regional, or national level departmental programs, functions, services, or activities to be contracted, including administrative functions.

(4) A description of the proposed program standards;

(5) An identification of the program reports, data and financial reports that the Indian tribe or tribal organization will provide, including their frequency.

(6) A description of any proposed redesign of the programs, services, functions, or activities to be contracted,

(7) Minimum staff qualifications proposed by the Indian tribe and tribal organization, if any; and

(8) A statement that the Indian tribe or tribal organization will meet the minimum procurement, property and financial management standards set forth in Subpart F, subject to any waiver that may have been granted under Subpart K.

(h) The amount of funds requested, including:

(1) An identification of the funds requested by programs, functions, services, or activities, under section 106(a)(1) of the Act, including the Indian tribe or tribal organization's share of funds related to such programs, functions, services, or activities, if any, from any Departmental local, area, regional, or national level.

(2) An identification of the amount of direct contract support costs, including one-time start-up or preaward costs under section 106(a)(2) and related provisions of the Act, presented by major categories such as:

(i) Personnel (differentiating between salary and fringe benefits);

(ii) Equipment;

(iii) Materials and supplies;

(iv) Travel;

(v) Subcontracts; and

(vi) Other appropriate items of cost.

(3) An identification of funds the Indian tribe or tribal organization requests to recover for indirect contract support costs. This funding request must include either:

(i) a copy of the most recent negotiated indirect cost rate agreement; or

(ii) an estimated amount requested for indirect costs, pending timely establishment of a rate or negotiation of administrative overhead costs.

(4) To the extent not stated elsewhere in the budget or previously reported to the Secretary, any preaward costs, including the amount and time period covered or to be covered; and

(5) At the option of the Indian tribe or tribal organization, an identification of programs, functions, services, or activities specified in the contract proposal which will be funded from sources other than the Secretary.

(i) The proposed starting date and term of the contract.

(j) In the case of a cooperative agreement, the nature and degree of Federal programmatic involvement anticipated during the term of the agreement.

(k) The extent of any planned use of Federal personnel and Federal resources.

(l) Any proposed waiver(s) of the regulations in this part; and

(m) A statement that the Indian tribe or tribal organization will implement procedures appropriate to the programs, functions, services or activities proposed to be contracted, assuring the confidentiality of medical records and of information relating to the financial affairs of individual Indians obtained under the proposal contract, or as otherwise required by law.

§ 900.9 May the Secretary require an Indian tribe or tribal organization to submit any other information beyond that identified in § 900.8?

No.

§ 900.10 How does an Indian tribe or tribal organization secure a list of all Federal property currently in use in carrying out the programs, functions, services, or activities that benefit the Indian tribe or tribal organization to assist in negotiating a contract?

The Indian tribe or tribal organization submits a written request to the Secretary. The Secretary shall provide the requested information, including the condition of the property, within 60 days.

§ 900.11 What should an Indian tribe or tribal organization that is proposing a contract do about specifying the Federal property that the Indian tribe or tribal organization may wish to use in carrying out the contract?

The Indian tribe or tribal organization is encouraged to provide the Secretary, as early as possible, with:

(a) A list of the following Federal property intended for use under the contract:

(1) Equipment;

(2) Furnishings;

(3) Facilities; and

(4) Other real and personal property.

(b) A statement of how the Indian tribe or tribal organization will obtain each item by transfer of title under § 105(f)(2) of the Act and section 1(b)(8) of the model agreement set forth in section 108(c) of the Act, through a temporary use permit, similar arrangement, or otherwise; and

(c) Where equipment is to be shared by contracted and non-contracted programs, services, functions, or activities, a proposal outlining proposed equipment sharing or other arrangements.

§ 900.12 Are the proposal contents requirements the same for renewal of a contract that is expiring and for securing an annual funding agreement after the first year of the funding agreement?

No. In these situations, an Indian tribe or tribal organization should submit a renewal proposal (or notification of intent not to renew) or an annual funding agreement proposal at least 90 days before the expiration date of the contract or existing annual funding agreement. The proposal shall provide funding information in the same detail and format as the original proposal and may also identify any significant proposed changes.

§ 900.13 Does the contract proposal become part of the final contract?

No, unless the parties agree.

Subpart D—Review and Approval of Contract Proposals

§ 900.14 What does this subpart cover?

This Subpart covers any proposal to enter into a self-determination contract, to amend an existing self-determination contract, to renew an existing self-determination contract, or to redesign a program through a self-determination contract.

§ 900.15 What shall the Secretary do upon receiving a proposal?

Upon receipt of a proposal, the Secretary shall:

(a) Within two days notify the applicant in writing that the proposal has been received;

(b) Within 15 days notify the applicant in writing of any missing items required by § 900.8 and request that the items be submitted within 15 days of receipt of the notification; and

(c) Review the proposal to determine whether there are declination issues under section 102(a)(2) of the Act.

§ 900.16 How long does the Secretary have to review and approve the proposal and award the contract, or decline a proposal?

The Secretary has 90 days after receipt of a proposal to review and approve the proposal and award the contract or decline the proposal in compliance with section 102 of the Act and subpart E. At any time during the review period the Secretary may approve the proposal and award the requested contract.

§ 900.17 Can the statutory 90-day period be extended?

Yes, with written consent of the Indian tribe or tribal organization. If consent is not given, the 90-day deadline applies.

§ 900.18 What happens if a proposal is not declined within 90 days after it is received by the Secretary?

A proposal that is not declined within 90 days (or within any agreed extension under § 900.17) is deemed approved and the Secretary shall award the contract or any amendment or renewal within that 90-day period and add to the contract the full amount of funds pursuant to Section 106(a) of the Act.

§ 900.19 What happens when a proposal is approved?

Upon approval the Secretary shall award the contract and add to the contract the full amount of funds to which the contractor is entitled under section 106(a) of the Act.

Subpart E—Declination Procedures

§ 900.20 What does this Subpart cover?

This subpart explains how and under what circumstances the Secretary may decline a proposal to contract, to amend an existing contract, to renew an existing contract, to redesign a program, or to waive any provisions of these regulations. For annual funding agreements, see § 900.32.

§ 900.21 When can a proposal be declined?

As explained in Secs. 900.16 and 900.17, a proposal can only be declined within 90 days after the Secretary receives the proposal, unless that period

is extended with the voluntary and express written consent of the Indian tribe or tribal organization.

§ 900.22 For what reasons can the Secretary decline a proposal?

The Secretary may only decline to approve a proposal for one of five specific reasons:

(a) The service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory;

(b) Adequate protection of trust resources is not assured;

(c) The proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract;

(d) The amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under section 106(a) of the Act; or

(e) The program, function, service, or activity (or a portion thereof) that is the subject of the proposal is beyond the scope of programs, functions, services, or activities covered under section 102(a)(1) of the Act because the proposal includes activities that cannot lawfully be carried out by the contractor.

§ 900.23 Can the Secretary decline a proposal where the Secretary's objection can be overcome through the contract?

No. The Secretary may not decline to enter into a contract with an Indian tribe or tribal organization based on any objection that will be overcome through the contract.

§ 900.24 Can a contract proposal for an Indian tribe or tribal organization's share of administrative programs, functions, services, and activities be declined for any reason other than the five reasons specified in § 900.22?

No. The Secretary may only decline a proposal based upon one or more of the five reasons listed above. If a contract affects the preexisting level of services to any other tribe, the Secretary shall address that effect in the Secretary's annual report to Congress under section 106(c)(6) of the Act.

§ 900.25 What if only a portion of a proposal raises one of the five declination criteria?

The Secretary must approve any severable portion of a proposal that does not support a declination finding described in § 900.20, subject to any alteration in the scope of the proposal that the Secretary and the Indian tribe or tribal organization approve.

§ 900.26 What happens if the Secretary declines a part of a proposal on the ground that the proposal proposes in part to plan, conduct, or administer a program, function, service or activity that is beyond the scope of programs covered under section 102(a) of the Act, or proposes a level of funding that is in excess of the applicable level determined under section 106(a) of the Act?

In those situations the Secretary is required, as appropriate, to approve the portion of the program, function, service, or activity that is authorized under section 102(a) of the Act, or approve a level of funding that is authorized under section 106(a) of the Act. As noted in § 900.25, the approval is subject to any alteration in the scope of the proposal that the Secretary and the Indian tribe or tribal organization approve.

§ 900.27 If an Indian tribe or tribal organization elects to contract for a severable portion of a proposal, does the Indian tribe or tribal organization lose its appeal rights to challenge the portion of the proposal that was declined?

No, but the hearing and appeal procedures contained in these regulations only apply to the portion of the proposal that was declined.

§ 900.28 Is technical assistance available to an Indian tribe or tribal organization to avoid declination of a proposal?

Yes. In accordance with section 103(d) of the Act, upon receiving a proposal, the Secretary shall provide any necessary requested technical assistance to an Indian tribe or tribal organization, and shall share all relevant information with the Indian tribe or tribal organization, in order to avoid declination of the proposal.

§ 900.29 What is the Secretary required to do if the Secretary decides to decline all or a portion of a proposal?

If the Secretary decides to decline all or a severable portion of a proposal, the Secretary is required:

(a) To advise the Indian tribe or tribal organization in writing of the Secretary's objections, including a specific finding that clearly demonstrates that (or that is supported by a controlling legal authority that) one of the conditions set forth in § 900.22 exists, together with a detailed explanation of the reason for the decision to decline the proposal and, within 20 days, any documents relied on in making the decision; and

(b) To advise the Indian tribe or tribal organization in writing of the rights described in § 900.31.

§ 900.30 When the Secretary declines all or a portion of a proposal, is the Secretary required to provide an Indian tribe or tribal organization with technical assistance?

Yes. The Secretary shall provide additional technical assistance to overcome the stated objections, in accordance with section 102(b) of the Act, and shall provide any necessary requested technical assistance to develop any modifications to overcome the Secretary's stated objections.

§ 900.31 When the Secretary declines all or a portion of a proposal, is an Indian tribe or tribal organization entitled to any appeal?

Yes. The Indian tribe or tribal organization is entitled to an appeal on the objections raised by the Secretary, with an agency hearing on the record, and the right to engage in full discovery relevant to any issue raised in the matter. The procedures for appeals are in subpart L of these regulations. Alternatively, at its option the Indian tribe or tribal organization has the right to sue in Federal district court to challenge the Secretary's decision.

§ 900.32 Can the Secretary decline an Indian tribe or tribal organization's proposed successor annual funding agreement?

No. If it is substantially the same as the prior annual funding agreement (except for funding increases included in appropriations acts or funding reductions as provided in section 106(b) of the Act) and the contract is with DHHS or the BIA, the Secretary shall approve and add to the contract the full amount of funds to which the contractor is entitled, and may not decline, any portion of a successor annual funding agreement. Any portion of an annual funding agreement proposal which is not substantially the same as that which was funded previously (e.g., a redesign proposal; waiver proposal; different proposed funding amount; or different program, service, function, or activity), or any annual funding agreement proposal which pertains to a contract with an agency of DOI other than the BIA, is subject to the declination criteria and procedures in subpart E. If there is a disagreement over the availability of appropriations, the Secretary may decline the proposal in part under the procedure in subpart E.

§ 900.33 Are all proposals to renew term contracts subject to the declination criteria?

Department of Health and Human Services and the Bureau of Indian Affairs will not review the renewal of a term contract for declination issues where no material and substantial

change to the scope or funding of a program, functions, services, or activities has been proposed by the Indian tribe or tribal organization. Proposals to renew term contracts with DOI agencies other than the Bureau of Indian Affairs may be reviewed under the declination criteria.

Subpart F—Standards for Tribal or Tribal Organization Management Systems

General

§ 900.35 What is the purpose of this subpart?

This subpart contains the minimum standards for the management systems used by Indian tribes or tribal organizations when carrying out self-determination contracts. It provides standards for an Indian tribe or tribal organization's financial management system, procurement management system, and property management system.

§ 900.36 What requirements are imposed upon Indian tribes or tribal organizations by this subpart?

When carrying out self-determination contracts, Indian tribes and tribal organizations shall develop, implement, and maintain systems that meet these minimum standards, unless one or more of the standards have been waived, in whole or in part, under section 107(e) of the Act and Subpart K.

§ 900.37 What provisions of Office of Management and Budget (OMB) circulars or the ''common rule'' apply to self-determination contracts?

The only provisions of OMB Circulars and the only provisions of the ''common rule'' that apply to self-determination contracts are the provisions adopted in these regulations, those expressly required or modified by the Act, and those negotiated and agreed to in a self-determination contract.

§ 900.38 Do these standards apply to the subcontractors of an Indian tribe or tribal organization carrying out a self-determination contract?

An Indian tribe or tribal organization may require that some or all of the standards in this subpart be imposed upon its subcontractors when carrying out a self-determination contract.

§ 900.39 What is the difference between a standard and a system?

(a) Standards are the minimum baseline requirements for the performance of an activity. Standards establish the ''what'' that an activity should accomplish.

(b) Systems are the procedural mechanisms and processes for the day-to-day conduct of an activity. Systems are ''how'' the activity will be accomplished.

§ 900.40 When are Indian tribe or tribal organization management standards and management systems evaluated?

(a) Management standards are evaluated by the Secretary when the Indian tribe or tribal organization submits an initial contract proposal.

(b) Management systems are evaluated by an independent auditor through the annual single agency audit report that is required by the Act and OMB Circular A–128.

§ 900.41 How long must an Indian tribe or tribal organization keep management system records?

The Indian tribe or tribal organization must retain financial, procurement and property records for the minimum periods described below. Electronic, magnetic or photographic records may be substituted for hard copies.

(a) *Financial records.* Financial records include documentation of supporting costs incurred under the contract. These records must be retained for three years from the date of submission of the single audit report to the Secretary.

(b) *Procurement records.* Procurement records include solicitations, purchase orders, contracts, payment histories and records applicable of significant decisions. These records must be retained for three years after the Indian tribe or tribal organization or subcontractors make final payment and all other pending matters are closed.

(c) *Property management records.* Property management records of real and personal property transactions must be retained for three years from the date of disposition, replacement, or transfer.

(d) *Litigation, audit exceptions and claims.* Records pertaining to any litigation, audit exceptions or claims requiring management systems data must be retained until the action has been completed.

Standards for Financial Management Systems

§ 900.42 What are the general financial management system standards that apply to an Indian tribe carrying out a self-determination contract?

An Indian tribe shall expend and account for contract funds in accordance with all applicable tribal laws, regulations, and procedures.

§ 900.43 What are the general financial management system standards that apply to a tribal organization carrying out a self-determination contract?

A tribal organization shall expend and account for contract funds in accordance with the procedures of the tribal organization.

§ 900.44 What minimum general standards apply to all Indian tribe or tribal organization financial management systems when carrying out a self-determination contract?

The fiscal control and accounting procedures of an Indian tribe or tribal organization shall be sufficient to:

(a) Permit preparation of reports required by a self-determination contract and the Act; and

(b) Permit the tracing of contract funds to a level of expenditure adequate to establish that they have not been used in violation of any restrictions or prohibitions contained in any statute that applies to the self-determination contract.

§ 900.45 What specific minimum requirements shall an Indian tribe or tribal organization's financial management system contain to meet these standards?

An Indian tribe or tribal organization's financial management system shall include provisions for the following seven elements.

(a) *Financial reports.* The financial management system shall provide for accurate, current, and complete disclosure of the financial results of self-determination contract activities. This includes providing the Secretary a completed Financial Status Report, SF 269A, as negotiated and agreed to in the self-determination contract.

(b) *Accounting records.* The financial management system shall maintain records sufficiently detailed to identify the source and application of self-determination contract funds received by the Indian tribe or tribal organization. The system shall contain sufficient information to identify contract awards, obligations and unobligated balances, assets, liabilities, outlays, or expenditures and income.

(c) *Internal controls.* The financial management system shall maintain effective control and accountability for all self-determination contract funds received and for all Federal real property, personal property, and other assets furnished for use by the Indian tribe or tribal organization under the self-determination contract.

(d) *Budget controls.* The financial management system shall permit the comparison of actual expenditures or outlays with the amounts budgeted by

the Indian tribe or tribal organization for each self-determination contract.

(e) *Allowable costs.* The financial management system shall be sufficient to determine the reasonableness, allowability, and allocability of self-determination contract costs based upon the terms of the self-determination contract and the Indian tribe or tribal organization's applicable OMB cost principles, as amended by the Act and these regulations. (The following chart lists certain OMB Circulars and suggests the entities that may use each, but the final selection of the applicable circular may differ from those shown, as agreed to by the Indian tribe or tribal organization and the Secretary. Agreements between an Indian tribe or tribal organization and the Secretary currently in place do not require renegotiation.) Copies of these circulars are available from the Executive Office of the President, Publications Service, 725 17th Street N. W., Washington, D. C. 20503.

Type of tribal organization	Applicable OMB cost circular
Tribal Government	A–87, ''Cost Principles for State, Local and Indian Tribal Governments.''
Tribal private non-profit other than: (1) an institution of higher education, (2) a hospital, or (3) an organization named in OMB Circular A–122 as not subject to that circular.	A–122, ''Cost Principles for Non-Profit Organizations.''
Tribal educational institution	A–21, ''Cost Principles for Educational Institutions.''

(f) *Source documentation.* The financial management system shall contain accounting records that are supported by source documentation, e.g., canceled checks, paid bills, payroll records, time and attendance records, contract award documents, purchase orders, and other primary records that support self-determination contract fund expenditures.

(g) *Cash management.* The financial management system shall provide for accurate, current, and complete disclosure of cash revenues disbursements, cash-on-hand balances, and obligations by source and application for each Indian tribe or tribal organization, and subcontractor if applicable, so that complete and accurate cash transactions may be prepared as required by the self-determination contract.

§ 900.46 What requirements are imposed upon the Secretary for financial management by these standards?

The Secretary shall establish procedures, consistent with Treasury regulations as modified by the Act, for the transfer of funds from the United States to the Indian tribe or tribal organization in strict compliance with the self-determination contract and the annual funding agreement.

Procurement Management System Standards

§ 900.47 When procuring property or services with self-determination contract funds, can an Indian tribe or tribal organization follow the same procurement policies and procedures applicable to other Indian tribe or tribal organization funds?

Indian tribes and tribal organizations shall have standards that conform to the standards in this Subpart. If the Indian tribe or tribal organization relies upon standards different than those described below, it shall identify the standards it will use as a proposed waiver in the initial contract proposal or as a waiver request to an existing contract.

§ 900.48 If the Indian tribe or tribal organization does not propose different standards, what basic standards shall the Indian tribe or tribal organization follow?

(a) The Indian tribe or tribal organization shall ensure that its vendors and/or subcontractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(b) The Indian tribe or tribal organization shall maintain written standards of conduct governing the performance of its employees who award and administer contracts.

(1) No employee, officer, elected official, or agent of the Indian tribe or tribal organization shall participate in the selection, award, or administration of a procurement supported by Federal funds if a conflict of interest, real or apparent, would be involved.

(2) An employee, officer, elected official, or agent of an Indian tribe or tribal organization, or of a subcontractor of the Indian tribe or tribal organization, is not allowed to solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements, with the following exemptions. The Indian tribe or tribal organization may exempt a financial interest that is not substantial or a gift that is an unsolicited item of nominal value.

(3) These standards shall also provide for penalties, sanctions, or other disciplinary actions for violations of the standards.

(c) The Indian tribe or tribal organization shall review proposed procurements to avoid buying unnecessary or duplicative items and ensure the reasonableness of the price. The Indian tribe or tribal organization should consider consolidating or breaking out procurement to obtain more economical purchases. Where appropriate, the Indian tribe or tribal organization shall compare leasing and purchasing alternatives to determine which is more economical.

(d) The Indian tribe or tribal organization shall conduct all major procurement transactions by providing full and open competition, to the extent necessary to assure efficient expenditure of contract funds and to the extent feasible in the local area.

(1) Indian tribes or tribal organizations shall develop their own definition for ''major procurement transactions.''

(2) As provided in sections 7 (b) and (c) of the Act, Indian preference and tribal preferences shall be applied in any procurement award.

(e) The Indian tribe or tribal organization shall make procurement awards only to responsible entities who have the ability to perform successfully under the terms and conditions of the proposed procurement. In making this judgment, the Indian tribe or tribal organization will consider such matters as the contractor's integrity, its compliance with public policy, its record of past performance, and its financial and technical resources.

(f) The Indian tribe or tribal organization shall maintain records on the significant history of all major procurement transactions. These records may include, but are not limited to, the rationale for the method of procurement, the selection of contract type, the contract selection or rejection, and the basis for the contract price.

(g) The Indian tribe or tribal organization is solely responsible, using good administrative practice and sound business judgment, for processing and settling all contractual and administrative issues arising out of a procurement. These issues include, but

are not limited to, source evaluation, protests, disputes, and claims.

(1) The settlement of any protest, dispute, or claim shall not relieve the Indian tribe or tribal organization of any obligations under a self-determination contract.

(2) Violations of law shall be referred to the tribal or Federal authority having proper jurisdiction.

§ 900.49 What procurement standards apply to subcontracts?

Each subcontract entered into under the Act shall at a minimum:

(a) Be in writing;

(b) Identify the interested parties, their authorities, and the purposes of the contract;

(c) State the work to be performed under the contract;

(d) State the process for making any claim, the payments to be made, and the terms of the contract, which shall be fixed; and

(e) Be subject to sections 7 (b) and (c) of the Act.

§ 900.50 What Federal laws, regulations, and Executive Orders apply to subcontractors?

Certain provisions of the Act as well as other applicable Federal laws, regulations, and Executive Orders apply to subcontracts awarded under self-determination contracts. As a result, subcontracts should contain a provision informing the recipient that their award is funded with Indian Self-Determination Act funds and that the recipient is responsible for identifying and ensuring compliance with applicable Federal laws, regulations, and Executive Orders. The Secretary and the Indian tribe or tribal organization may, through negotiation, identify all or a portion of such requirements in the self-determination contract and, if so identified, these requirements should be identified in subcontracts.

Property Management System Standards

§ 900.51 What is an Indian tribe or tribal organization's property management system expected to do?

An Indian tribe or tribal organization's property management system shall account for all property furnished or transferred by the Secretary for use under a self-determination contract or acquired with contract funds. The property management system shall contain requirements for the use, care, maintenance, and disposition of Federally-owned and other property as follows:

(a) Where title vests in the Indian tribe, in accordance with tribal law and procedures; or

(b) In the case of a tribal organization, according to the internal property procedures of the tribal organization.

§ 900.52 What type of property is the property management system required to track?

The property management system of the Indian tribe or tribal organization shall track:

(a) Personal property with an acquisition value in excess of $5,000 per item;

(b) Sensitive personal property, which is all personal property that is subject to theft and pilferage, as defined by the Indian tribe or tribal organization. All firearms shall be considered sensitive personal property; and

(c) Real property provided by the Secretary for use under the contract.

§ 900.53 What kind of records shall the property management system maintain?

The property management system shall maintain records that accurately describe the property, including any serial number or other identification number. These records should contain information such as the source, titleholder, acquisition date, cost, share of Federal participation in the cost, location, use and condition of the property, and the date of disposal and sale price, if any.

§ 900.54 Should the property management system prescribe internal controls?

Yes. Effective internal controls should include procedures:

(a) For the conduct of periodic inventories;

(b) To prevent loss or damage to property; and

(c) To ensure that property is used for an Indian tribe or tribal organization's self-determination contract(s) until the property is declared excess to the needs of the contract consistent with the Indian tribe or tribal organization's property management system.

§ 900.55 What are the standards for inventories?

A physical inventory should be conducted at least once every 2 years. The results of the inventory shall be reconciled with the Indian tribe or tribal organization's internal property and accounting records.

§ 900.56 What maintenance is required for property?

Required maintenance includes the performance of actions necessary to keep the property in good working condition, the procedures recommended by equipment manufacturers, and steps necessary to protect the interests of the contractor and the Secretary in any express warranties or guarantees covering the property.

§ 900.57 What if the Indian tribe or tribal organization chooses not to take title to property furnished or acquired under the contract?

If the Indian tribe or tribal organization chooses not to take title to property furnished by the government or acquired with contract funds, title to the property remains vested in the Secretary. A list of Federally-owned property to be used under the contract shall be included in the contract.

§ 900.58 Do the same accountability and control procedures described above apply to Federal property?

Yes, except that requirements for the inventory and disposal of Federal property are different.

§ 900.59 How are the inventory requirements for Federal property different than for tribal property?

There are three additional requirements:

(a) The Indian tribe or tribal organization shall conduct a physical inventory of the Federally-owned property and reconcile the results with the Indian tribe or tribal organization's property records annually, rather than every 2 years;

(b) Within 90 days following the end of an annual funding agreement, the Indian tribe or tribal organization shall certify and submit to the Secretary an annual inventory of all Federally-owned real and personal property used in the contracted program; and

(c) The inventory shall report any increase or decrease of $5,000 or more in the value of any item of real property.

§ 900.60 How does an Indian tribe or tribal organization dispose of Federal personal property?

The Indian tribe or tribal organization shall report to the Secretary in writing any Federally-owned personal property that is worn out, lost, stolen, damaged beyond repair, or no longer needed for the performance of the contract.

(a) The Indian tribe or tribal organization shall state whether the Indian tribe or tribal organization wants to dispose of or return the property.

(b) If the Secretary does not respond within 60 days, the Indian tribe or tribal organization may return the property to the Secretary, who shall accept transfer, custody, control, and responsibility for the property (together with all associated costs).

Subpart G—Programmatic Reports and Data Requirements

§ 900.65 What programmatic reports and data shall the Indian tribe or tribal organization provide?

Unless required by statute, there are no mandatory reporting requirements. Each Indian tribe or tribal organization shall negotiate with the Secretary the type and frequency of program narrative and program data report(s) which respond to the needs of the contracting parties and that are appropriate for the purposes of the contract. The extent of available resources will be a consideration in the negotiations.

§ 900.66 What happens if the Indian tribe or tribal organization and the Secretary cannot come to an agreement concerning the type and/or frequency of program narrative and/or program data report(s)?

Any disagreements over reporting requirements are subject to the declination criteria and procedures in section 102 of the Act and subpart E.

§ 900.67 Will there be a uniform data set for all IHS programs?

IHS will work with Indian tribe or tribal organization representatives to develop a mutually defined uniform subset of data that is consistent with Congressional intent, imposes a minimal reporting burden, and which responds to the needs of the contracting parties.

§ 900.68 Will this uniform data set be required of all Indian tribe or tribal organizations contracting with the IHS under the Act?

No. The uniform data set, applicable to the services to be performed, will serve as the target for the Secretary and the Indian tribes or tribal organizations during individual negotiations on program data reporting requirements.

Subpart H—Lease of Tribally-Owned Buildings by the Secretary

§ 900.69 What is the purpose of this subpart?

Section 105(l) of the Act requires the Secretary, at the request of an Indian tribe or tribal organization, to enter into a lease with the Indian tribe or tribal organization for a building owned or leased by the tribe or tribal organization that is used for administration or delivery of services under the Act. The lease is to include compensation as provided in the statute as well as ''such other reasonable expenses that the Secretary determines, by regulation, to be allowable.'' This subpart contains requirements for these leases.

§ 900.70 What elements are included in the compensation for a lease entered into between the Secretary and an Indian tribe or tribal organization for a building owned or leased by the Indian tribe or tribal organization that is used for administration or delivery of services under the Act?

To the extent that no element is duplicative, the following elements may be included in the lease compensation:

(a) Rent (sublease);

(b) Depreciation and use allowance based on the useful life of the facility based on acquisition costs not financed with Federal funds;

(c) Contributions to a reserve for replacement of facilities;

(d) Principal and interest paid or accrued;

(e) Operation and maintenance expenses, to the extent not otherwise included in rent or use allowances, including, but not limited to, the following:

(1) Water, sewage;

(2) Utilities;

(3) Fuel;

(4) Insurance;

(5) Building management supervision and custodial services;

(6) Custodial and maintenance supplies;

(7) Pest control;

(8) Site maintenance (including snow and mud removal);

(9) Trash and waste removal and disposal;

(10) Fire protection/fire fighting services and equipment;

(11) Monitoring and preventive maintenance of building structures and systems, including but not limited to:

(i) Heating/ventilation/air conditioning;

(ii) Plumbing;

(iii) Electrical;

(iv) Elevators;

(v) Boilers;

(vi) Fire safety system;

(vii) Security system; and

(viii) Roof, foundation, walls, floors.

(12) Unscheduled maintenance;

(13) Scheduled maintenance (including replacement of floor coverings, lighting fixtures, repainting);

(14) Security services;

(15) Management fees; and

(16) Other reasonable and necessary operation or maintenance costs justified by the contractor;

(f) Repairs to buildings and equipment;

(g) Alterations needed to meet contract requirements;

(h) Other reasonable expenses; and

(i) The fair market rental for buildings or portions of buildings and land, exclusive of the Federal share of building construction or acquisition costs, or the fair market rental for buildings constructed with Federal funds exclusive of fee or profit, and for land.

§ 900.71 What type of reserve fund is anticipated for funds deposited into a reserve for replacement of facilities as specified in § 900.70(c)?

Reserve funds must be accounted for as a capital project fund or a special revenue fund.

§ 900.72 Who is the guardian of the fund and may the funds be invested?

(a) The Indian tribe or tribal organization is the guardian of the fund.

(b) Funds may be invested in accordance with the laws, regulations and policies of the Indian tribe or tribal organization subject to the terms of the lease or the self-determination contract.

§ 900.73 Is a lease with the Secretary the only method available to recover the types of cost described in § 900.70?

No. With the exception of paragraph (i) in § 900.70, the same types of costs may be recovered in whole or in part under section 106(a) of the Act as direct or indirect charges to a self-determination contract.

§ 900.74 How may an Indian tribe or tribal organization propose a lease to be compensated for the use of facilities?

There are three options available:

(a) The lease may be based on fair market rental.

(b) The lease may be based on a combination of fair market rental and paragraphs (a) through (h) of § 900.70, provided that no element of expense is duplicated in fair market rental.

(c) The lease may be based on paragraphs (a) through (h) of § 900.70 only.

Subpart I—Property Donation Procedures

General

§ 900.85 What is the purpose of this subpart?

This subpart implements section 105(f) of the Act regarding donation of Federal excess and surplus property to Indian tribes or tribal organizations and acquisition of property with funds provided under a self-determination contract or grant.

§ 900.86 How will the Secretary exercise discretion to acquire and donate BIA or IHS excess property and excess and surplus Federal property to an Indian tribe or tribal organization?

The Secretary will exercise discretion in a way that gives maximum effect to the requests of Indian tribes or tribal organizations for donation of BIA or IHS

excess property and excess or surplus Federal property, provided that the requesting Indian tribe or tribal organization shall state how the requested property is appropriate for use for any purpose for which a self-determination contract or grant is authorized.

Government-Furnished Property

§ 900.87 How does an Indian tribe or tribal organization obtain title to property furnished by the Federal government for use in the performance of a contract or grant agreement pursuant to section 105(f)(2)(A) of the Act?

(a) For government-furnished personal property made available to an Indian tribe or tribal organization before October 25, 1994:

(1) The Secretary, in consultation with each Indian tribe or tribal organization, shall develop a list of the property used in a self-determination contract.

(2) The Indian tribe or tribal organization shall indicate any items on the list to which the Indian tribe or tribal organization wants the Secretary to retain title.

(3) The Secretary shall provide the Indian tribe or tribal organization with any documentation needed to transfer title to the remaining listed property to the Indian tribe or tribal organization.

(b) For government-furnished real property made available to an Indian tribe or tribal organization before October 25, 1994:

(1) The Secretary, in consultation with the Indian tribe or tribal organization, shall develop a list of the property furnished for use in a self-determination contract.

(2) The Secretary shall inspect any real property on the list to determine the presence of any hazardous substance activity, as defined in 41 CFR 101–47.202.2(b)(10). If the Indian tribe or tribal organization desires to take title to any real property on the list, the Indian tribe or tribal organization shall inform the Secretary, who shall take such steps as necessary to transfer title to the Indian tribe or tribal organization.

(c) For government-furnished real and personal property made available to an Indian tribe or tribal organization on or after October 25, 1994:

(1) The Indian tribe or tribal organization shall take title to all property unless the Indian tribe or tribal organization requests that the United States retain the title.

(2) The Secretary shall determine the presence of any hazardous substance activity, as defined in 41 CFR 101–47.202.2(b)(10).

§ 900.88 What should the Indian tribe or tribal organization do if it wants to obtain title to government-furnished real property that includes land not already held in trust?

If the land is owned by the United States but not held in trust for an Indian tribe or individual Indian, the Indian tribe or tribal organization shall specify whether it wants to acquire fee title to the land or whether it wants the land to be held in trust for the benefit of a tribe.

(a) If the Indian tribe or tribal organization requests fee title, the Secretary shall take the necessary action under Federal law and regulations to transfer fee title.

(b) If the Indian tribe or tribal organization requests beneficial ownership with fee title to be held by the United States in trust for an Indian tribe:

(1) The Indian tribe or tribal organization shall submit with its request a resolution of support from the governing body of the Indian tribe in which the beneficial ownership is to be registered.

(2) If the request is submitted to the Secretary of Health and Human Services for land under the jurisdiction of that Secretary, the Secretary shall take all necessary steps to effect a transfer of the land to the Secretary of the Interior and shall also forward the Indian tribe or tribal organization's request and the tribe's resolution.

(3) The Secretary of the Interior shall expeditiously process all requests in accordance with applicable Federal law and regulations.

(4) The Secretary shall not require the Indian tribe or tribal organization to furnish any information in support of a request other than that required by law or regulation.

§ 900.89 When may the Secretary elect to reacquire government-furnished property whose title has been transferred to an Indian tribe or tribal organization?

(a) Except as provided in paragraph (b) of this section, when a self-determination contract or grant agreement, or portion thereof, is retroceded, reassumed, terminated, or expires, the Secretary shall have the option to take title to any item of government-furnished property:

(1) That title has been transferred to an Indian tribe or tribal organization;

(2) That is still in use in the program; and

(3) That has a current fair market value, less the cost of improvements borne by the Indian tribe or tribal organization in excess of $5,000.

(b) If property referred to in paragraph (a) of this section is shared between one or more ongoing contracts or grant agreements and a contract or grant agreement that is retroceded, reassumed, terminated or expires and the Secretary wishes to use such property in the retroceded or reassumed program, the Secretary and the contractor or grantee using such property shall negotiate an acceptable arrangement for continued sharing of such property and for the retention or transfer of title.

§ 900.90 Does government-furnished real property to which an Indian tribe or tribal organization has taken title continue to be eligible for facilities operation and maintenance funding from the Secretary?

Yes.

Contractor-Purchased Property

§ 900.91 Who takes title to property purchased with funds under a self-determination contract or grant agreement pursuant to section 105(f)(2)(A) of the Act?

The contractor takes title to such property, unless the contractor chooses to have the United States take title. In that event, the contractor must inform the Secretary of the purchase and identify the property and its location in such manner as the contractor and the Secretary deem necessary. A request for the United States to take title to any item of contractor-purchased property may be made at any time. A request for the Secretary to take fee title to real property shall be expeditiously processed in accordance with applicable Federal law and regulation.

§ 900.92 What should the Indian tribe or tribal organization do if it wants contractor-purchased real property to be taken into trust?

The contractor shall submit a resolution of support from the governing body of the Indian tribe in which the beneficial ownership is to be registered. If the request to take contractor-purchased real property into trust is submitted to the Secretary of Health and Human Services, that Secretary shall transfer the request to the Secretary of the Interior. The Secretary of the Interior shall expeditiously process all requests in accord with applicable Federal law and regulation.

§ 900.93 When may the Secretary elect to acquire title to contractor-purchased property?

(a) Except as provided in paragraph (b) of this section when a self-determination contract or grant agreement, or portion thereof, is retroceded, reassumed, terminated, or expires, the Secretary shall have the option to take title to any item of government-furnished property:

(1) Whose title has been transferred to an Indian tribe or tribal organization;

(2) That is still in use in the program; and

(3) That has a current fair market value, less the cost of improvements borne by the Indian tribe or tribal organization, in excess of $5,000.

(b) If property referred to in paragraph (a) of this section is shared between one or more ongoing contracts or grant agreements and a contract or grant agreement that is retroceded, reassumed, terminated or expires and the Secretary wishes to use such property in the retroceded or reassumed program, the Secretary and the contractor or grantee using such property shall negotiate an acceptable arrangement for continued sharing of such property and for the retention or transfer of title.

§ 900.94 Is contractor-purchased real property to which an Indian tribe or tribal organization holds title eligible for facilities operation and maintenance funding from the Secretary?

Yes.

BIA and IHS Excess Property

§ 900.95 What is BIA or IHS excess property?

BIA or IHS excess property means property under the jurisdiction of the BIA or IHS that is excess to the agency's needs and the discharge of its responsibilities.

§ 900.96 How can Indian tribes or tribal organizations learn about BIA and IHS excess property?

The Secretary shall not less than annually send to Indian tribes and tribal organizations a listing of all excess BIA or IHS personal property before reporting the property to GSA or to any other Federal agency as excess. The listing shall identify the agency official to whom a request for donation shall be submitted.

§ 900.97 How can an Indian tribe or tribal organization acquire excess BIA or IHS property?

(a) The Indian tribe or tribal organization shall submit to the appropriate Secretary a request for specific property that includes a statement of how the property is intended for use in connection with a self-determination contract or grant. The Secretary shall expeditiously process the request and shall exercise discretion in a way that gives maximum effect to the request of Indian tribes or tribal organizations for the donation of excess BIA or IHS property.

(b) If more than one request for the same item of personal property is submitted, the Secretary shall award the item to the requestor whose request is received on the earliest date. If two or more requests are received on the same date, the Secretary shall award the item to the requestor with the lowest transportation costs. The Secretary shall make the donation as expeditiously as possible.

(c) If more than one request for the same parcel of real property is submitted, the Secretary shall award the property to the Indian tribe or tribal organization whose reservation or trust land is closest to the real property requested.

§ 900.98 Who takes title to excess BIA or IHS property donated to an Indian tribe or tribal organization?

The Indian tribe or tribal organization takes title to donated excess BIA or IHS property. The Secretary shall provide the Indian tribe or tribal organization with all documentation needed to vest title in the Indian tribe or tribal organization.

§ 900.99 Who takes title to any land that is part of excess BIA or IHS real property donated to an Indian tribe or tribal organization?

(a) If an Indian tribe or tribal organization requests donation of fee title to excess real property that includes land not held in trust for an Indian tribe, the Indian tribe or tribal organization shall so specify in its request for donation. The Secretary shall take the necessary action under Federal law and regulations to transfer the title to the Indian tribe or tribal organization.

(b) If an Indian tribe or tribal organization asks the Secretary to donate excess real property that includes land and requests that fee title to the land be held by the United States in trust for an Indian tribe, the requestor shall submit a resolution of support from the governing body of the Indian tribe in which the beneficial ownership is to be registered.

(1) If the donation request is submitted to the Secretary of Health and Human Services, that Secretary shall take all steps necessary to transfer the land to the Secretary of the Interior with the Indian tribe or tribal organization's request and the Indian tribe's resolution. The Secretary of the Interior shall expeditiously process all requests in accordance with applicable Federal law and regulations.

(2) The Secretary shall not require the Indian tribe or tribal organization to furnish any information in support of a request other than that required by law or regulation.

§ 900.100 May the Secretary elect to reacquire excess BIA or IHS property whose title has been transferred to an Indian tribe or tribal organization?

Yes. When a self-determination contract or grant agreement, or portion— thereof, is retroceded, reassumed, terminated, or expires, the Secretary shall have the option to take title to any item of the property;

(a) Except as provided in paragraph (b) of this section when a self-determination contract or grant agreement, or portion thereof, is retroceded, reassumed, terminated, or expires, the Secretary shall have the option to take title to any item of government-furnished property:

(1) Whose title has been transferred to an Indian tribe or tribal organization;

(2) That is still in use in the program; and

(3) That has a current fair market value, less the cost of improvements borne by the Indian tribe or tribal organization, in excess of $5,000.

(b) To the extent that any property referred to in paragraph (a) of this section is shared between one or more ongoing contracts or grant agreements and a contract or grant agreement that is retroceded, reassumed, terminated or expires and the Secretary wishes to use such property in the retroceded or reassumed program, the Secretary and the contractor or grantee using such property shall negotiate an acceptable arrangement for continued sharing of such property and for the retention or transfer of title.

§ 900.101 Is excess BIA or IHS real property to which an Indian tribe or tribal organization has taken title eligible for facilities operation and maintenance funding from the Secretary?

Yes.

Excess or Surplus Government Property of Other Agencies

§ 900.102 What is excess or surplus government property of other agencies?

(a) ''Excess government property'' is real or personal property under the control of a Federal agency, other than BIA and IHS, which is not required for the agency's needs and the discharge of its responsibilities.

(b) ''Surplus government property'' means excess real or personal property that is not required for the needs of and the discharge of the responsibilities of all Federal agencies that has been declared surplus by the General Services Administration (GSA).

§ 900.103 How can Indian tribes or tribal organizations learn about property that has been designated as excess or surplus government property?

The Secretary shall furnish, not less than annually, to Indian tribes or tribal organizations listings of such property as may be made available from time to time by GSA or other Federal agencies, and shall obtain listings upon the request of an Indian tribe or tribal organization.

§ 900.104 How may an Indian tribe or tribal organization receive excess or surplus government property of other agencies?

(a) The Indian tribe or tribal organization shall file a request for specific property with the Secretary, and shall state how the property is appropriate for use for a purpose for which a self-determination contract or grant is authorized under the Act.

(b) The Secretary shall expeditiously process such request and shall exercise discretion to acquire the property in the manner described in § 900.86 of this Subpart.

(c) Upon approval of the Indian tribe or tribal organization's request, the Secretary shall immediately request acquisition of the property from the GSA or the holding agency, as appropriate, by submitting the necessary documentation in order to acquire the requested property prior to the expiration of any ''freeze'' placed on the property by the Indian tribe or tribal organization.

(d) The Secretary shall specify that the property is requested for donation to an Indian tribe or tribal organization pursuant to authority provided in section 105(f)(3) of the Act.

(e) The Secretary shall request a waiver of any fees for transfer of the property in accordance with applicable Federal regulations.

§ 900.105 Who takes title to excess or surplus Federal property donated to an Indian tribe or tribal organization?

(a) Title to any donated excess or surplus Federal personal property shall vest in the Indian tribe or tribal organization upon taking possession.

(b) Legal title to donated excess or surplus Federal real property shall vest in the Indian tribe or tribal organization upon acceptance by the Indian tribe or tribal organization of a proper deed of conveyance.

(c) If the donation of excess or surplus Federal real property includes land owned by the United States but not held in trust for an Indian tribe, the Indian tribe or tribal organization shall specify whether it wants to acquire fee title to the land or whether it wants the land to be held in trust for the benefit of an Indian tribe.

(1) If the Indian tribe or tribal organization requests fee title, the Secretary shall take the necessary action under Federal law and regulations to transfer fee title to the Indian tribe or tribal organization.

(2) If the Indian tribe or tribal organization requests beneficial ownership with fee title to be held by the United States in trust for an Indian tribe:

(i) The Indian tribe or tribal organization shall submit with its request a resolution of support from the governing body of the Indian tribe in which the beneficial ownership is to be registered.

(ii) If the donation request of the Indian tribe or tribal organization is submitted to the Secretary of Health and Human Services, that Secretary shall take all necessary steps to acquire the land and transfer it to the Secretary of the Interior and shall also forward the Indian tribe or tribal organization's request and the Indian tribe's resolution.

(iii) The Secretary of the Interior shall expeditiously process all requests in accord with applicable Federal law and regulations.

(iv) The Secretary shall not require submission of any information other than that required by Federal law and regulation.

§ 900.106 If a contract or grant agreement or portion thereof is retroceded, reassumed, terminated, or expires, may the Secretary reacquire title to excess or surplus Federal property of other agencies that was donated to an Indian tribe or tribal organization?

No. Section 105(f)(3) of the Act does not give the Secretary the authority to reacquire title to excess or surplus government property acquired from other agencies for donation to an Indian tribe or tribal organization.

Property Eligible for Replacement Funding

§ 900.107 What property to which an Indian tribe or tribal organization obtains title under this Subpart is eligible for replacement funding?

Government-furnished property, contractor-purchased property and excess BIA and IHS property donated to an Indian tribe or tribal organization to which an Indian tribe or tribal organization holds title shall remain eligible for replacement funding to the same extent as if title to that property were held by the United States.

Subpart J—Construction

§ 900.110 What does this subpart cover?

(a) This subpart establishes requirements for issuing fixed-price or cost-reimbursable contracts to provide: design, construction, repair, improvement, expansion, replacement, erection of new space, or demolition and other related work for one or more Federal facilities. It applies to tribal facilities where the Secretary is authorized by law to design, construct and/or renovate, or make improvements to such tribal facilities.

(b) Activities covered by construction contracts under this subpart are: design and architectural/engineering services, construction project management, and the actual construction of the building or facility in accordance with the construction documents, including all labor, materials, equipment, and services necessary to complete the work defined in the construction documents.

(1) Such contracts may include the provision of movable equipment, telecommunications and data processing equipment, furnishings (including works of art), and special purpose equipment, when part of a construction contract let under this subpart.

(2) While planning services and construction management services as defined in § 900.113 may be included in a construction contract under this subpart, they may also be contracted separately using the model agreement in section 108 of the Act.

§ 900.111 What activities of construction programs are contractible?

The Secretary shall, upon the request of any Indian tribe or tribal organization authorized by tribal resolution, enter into a self-determination contract to plan, conduct, and administer construction programs or portions thereof.

§ 900.112 What are construction phases?

(a) Construction programs generally include the following activities in phases which can vary by funding source (an Indian tribe or tribal organization should contact its funding source for more information regarding the conduct of its program):

(1) *The preplanning phase.* The phase during which an initial assessment and determination of project need is made and supporting information collected for presentation in a project application. This project application process is explained in more detail in § 900.122;

(2) *The planning phase.* The phase during which planning services are provided. This phase can include

conducting and preparing a detailed needs assessment, developing justification documents, completing and/or verifying master plans, conducting predesign site investigations and selection, developing budget cost estimates, conducting feasibility studies, and developing a project Program of Requirements (POR);

(3) *The design phase.* The phase during which licensed design professional(s) using the POR as the basis for design of the project, prepare project plans, specifications, and other documents that are a part of the construction documents used to build the project. Site investigation and selection activities are completed in this phase if not conducted as part of the planning phase.

(4) *The construction phase.* The phase during which the project is constructed. The construction phase includes providing the labor, materials, equipment, and services necessary to complete the work in accordance with the construction documents prepared as part of the design phase.

(b) The following activities may be part of phases described in paragraphs (a)(2), (a)(3), and (a)(4) of this section:

(1) Management; and

(2) Environmental, archeological, cultural resource, historic preservation, and similar assessments and associated activities.

§ 900.113 Definitions.

(a) *Construction contract* means a fixed-price or cost-reimbursement self-determination contract for a construction project, except that such term does not include any contract:

(1) That is limited to providing planning services and construction management services (or a combination of such services);

(2) For the Housing Improvement Program or roads maintenance program of the Bureau of Indian Affairs administered by the Secretary of the Interior; or

(3) For the health facility maintenance and improvement program administered by the Secretary of Health and Human Services.

(b) *Construction management services* (CMS) means activities limited to administrative support services; coordination; and monitoring oversight of the planning, design, and construction process. An Indian tribe or tribal organization's employee or construction management services consultant (typically an engineer or architect) performs such activities as:

(1) Coordination and information exchange between the Indian tribe or tribal organization and the Federal government;

(2) Preparation of Indian tribe or tribal organization's construction contract proposals;

(3) Indian tribe or tribal organization subcontract scope of work identification and subcontract preparation, and competitive selection of Indian tribe or tribal organization construction contract subcontractors (see § 900.110);

(4) Review of work to ensure compliance with the POR and/or the construction contract. This does not involve construction project management as defined in paragraph (d) of this section.

(c) *Construction programs* include programs for the planning, design, construction, repair, improvement, and expansion of buildings or facilities, including but not limited to, housing, law enforcement and detention facilities, sanitation and water systems, roads, schools, administration and health facilities, irrigation and agricultural work, water conservation, flood control, and port facilities, and environmental, archeological, cultural resource, historic preservation, and conduct of similar assessments.

(d) *Construction project management* means direct responsibility for the construction project through day-to-day on-site management and administration of the project. Activities may include cost management, project budgeting, project scheduling, procurement services.

(e) *Design* means services performed by licensed design professionals related to preparing drawings, specifications, and other design submissions specified in the contract, as well as services provided by or for licensed design professionals during the bidding/negotiating, construction, and operational phases of the project.

(f) *Planning services* means activities undertaken to support agency and/or Congressional funding of a construction project. Planning services may include performing a needs assessment, completing and/or verifying master plans, developing justification documents, conducting pre-design site investigations, developing budget cost estimates, conducting feasibility studies as needed and completion of approved justification documents and a program of requirements (POR) for the project.

(g) *Program of Requirements* (POR) is a planning document developed during the planning phase for an individual project. It provides background about the project; site information; programmatic needs; and, for facilities projects, a detailed room-by-room listing of spaces, including net and gross sizes, finish materials to be used, furnishings and equipment, and other information and design criteria on which to base the construction project documents.

(h) *Scope of work* means the description of the work to be provided through a contract issued under this subpart and the methods and processes to be used to accomplish that work. A scope of work is typically developed based on criteria provided in a POR during the design phase, and project construction documents (plans and specifications) during the construction phase.

§ 900.114 Why is there a separate subpart in these regulations for construction contracts and grants?

There is a separate subpart because the Act differentiates between construction contracts and the model agreement in section 108 of the Act which is required for contracting other activities. Construction contracts are separately defined in the Act and are subject to a separate proposal and review process.

§ 900.115 How do self-determination construction contracts relate to ordinary Federal procurement contracts?

(a) A self-determination construction contract is a government-to-government agreement that transfers control of the construction project, including administrative functions, to the contracting Indian tribe or tribal organization to facilitate effective and meaningful participation by the Indian tribe or tribal organization in planning, conducting, and administering the construction project, and so that the construction project is responsive to the true needs of the Indian community. The Secretary's role in the conduct of a contracted construction project is limited to the Secretary's responsibilities set out in § 900.131.

(b) Self-determination construction contracts are not traditional ''procurement'' contracts.

(1) With respect to a construction contract (or a subcontract of such a construction contract), the provisions of the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) and the regulations promulgated under that Act, shall apply to a construction contract or subcontract only to the extent that application of the provision is:

(i) Necessary to ensure that the contract may be carried out in a satisfactory manner;

(ii) Directly related to the construction activity; and

(iii) Not inconsistent with the Act.

(2) A list of the Federal requirements that meet the requirements of this

paragraph shall be included in an attachment to the contract under negotiations between the Secretary and the Indian tribe or tribal organization.

(3) Except as provided in paragraph (b)(2) of this section, no Federal law listed in section 105(3)(C)(ii) of the Act or any other provision of Federal law (including an Executive order) relating to acquisition by the Federal government shall apply to a construction contract that an Indian tribe or tribal organization enters into under this Act, unless expressly provided in the law.

(c) Provisions of a construction contract under this subpart shall be liberally construed in favor of the contracting Indian tribe or tribal organization.

§ 900.116 Are negotiated fixed-price contracts treated the same as cost-reimbursable contracts?

Yes, except that in negotiated fixed-price construction contracts, appropriate clauses shall be negotiated to allocate properly the contract risks between the government and the contractor.

§ 900.117 Do these ''construction contract'' regulations apply to planning services?

(a) These regulations apply to planning services contracts only as provided in this section.

(1) The Indian tribe or tribal organization shall submit to the Secretary for review and approval the POR documents produced as a part of a model contract under section 108 of the Act or under a construction contract under this subpart.

(i) Within 60 days after receipt of the POR from the Indian tribe or tribal organization for a project that has achieved priority ranking or that is funded, the Secretary shall:

(A) Approve the POR;

(B) Notify the Indian tribe or tribal organization of and make available any objections to the POR that the Secretary may have; or

(C) Notify the Indian tribe or tribal organization of the reasons why the Secretary will be unable either to approve the POR or to notify the Indian tribe or tribal organization of any objections within 60 days, and state the time within which the notification will be made, provided that the extended time shall not exceed 60 additional days.

(ii) Within a maximum of 180 days after receipt of a POR from an Indian tribe or tribal organization for a project that is not funded and is not described in paragraph (a)(1)(i) of this section, the Secretary shall:

(A) Approve the POR; or

(B) Notify the Indian tribe or tribal organization of and make available any objections to the POR; or

(C) Notify the Indian tribe or tribal organization of the reasons why the Secretary will be unable either to approve the POR or to notify the Indian tribe or tribal organization of any objections within 180 days, and state the time within which the notification will be made, provided that the extended time shall not exceed 60 additional days.

(2) Any failure of the Secretary to act on a POR within the applicable period required in paragraph (a)(1) of this section will be deemed a rejection of the POR and will authorize the commencement of any appeal as provided in section 110 of the Act, or, if a model agreement under section 108 of the Act is used, the disputes provision of that agreement.

(3) If an Indian tribe or tribal organization elects to provide planning services as part of a construction contract rather than under a model agreement as set out in section 108 of the Act, the regulations in this subpart shall apply.

(b) The parties to the contract are encouraged to consult during the development of the POR and following submission of the POR to the Secretary.

§ 900.118 Do these ''construction contract'' regulations apply to construction management services?

No. Construction management services may be contracted separately under section 108 of the Act. Construction management services consultants and/or Indian tribe or tribal organization employees assist and advise the Indian tribe or tribal organization to implement construction contracts, but have no contractual relationship with or authority to direct construction contract subcontractors.

(a) If the Indian tribe or tribal organization chooses to contract solely for construction management services, these services shall be limited to:

(1) Coordination and exchange of information between the Indian tribe or tribal organization and the Secretary;

(2) Review of work produced by the Secretary to determine compliance with:

(i) The POR and design contract during the design stage; or

(ii) The project construction documents during the construction stage;

(3) Disputes shall be resolved in accordance with the disputes clause of the CMS contract.

(b) If the Indian tribe or tribal organization conducts CMS under section 108 of the Act and the Indian tribe or tribal organization contracts separately under this subpart for all or some of the activities in § 900.110, the contracted activities shall be limited to:

(1) Coordination and exchange of information between the Indian tribe or tribal organization and Secretary;

(2) Preparation of tribal or tribal organization construction subcontract scope of work identification and subcontract preparation, and competitive selection of tribal or tribal organization construction contract subcontractors;

(3) Review of work produced by tribal or tribal organization construction subcontractors to determine compliance with:

(i) The POR and the design contract during the design stage; or

(ii) The project construction documents during the construction stage.

§ 900.119 To what extent shall the Secretary consult with affected Indian tribes before spending funds for any construction project?

Before spending any funds for a planning, design, construction, or renovation project, whether subject to a competitive application and ranking process or not, the Secretary shall consult with any Indian tribe or tribal organization(s) that would be significantly affected by the expenditure to determine and to follow tribal preferences to the greatest extent feasible concerning: size, location, type, and other characteristics of the project.

§ 900.120 How does an Indian tribe or tribal organization find out about a construction project?

Within 30 days after the Secretary's allocation of funds for planning phase, design phase, or construction phase activities for a specific project, the Secretary shall notify, by registered mail with return receipt in order to document mailing, the Indian tribe or tribal organization(s) to be benefitted by the availability of the funds for each phase of a project. The Secretarial notice of fund allocation shall offer technical assistance in the preparation of a contract proposal.

(a) The Secretary shall, within 30 days after receiving a request from an Indian tribe or tribal organization, furnish the Indian tribe or tribal organization with all information available to the Secretary about the project including, but not limited to: construction drawings, maps, engineering reports, design reports, plans of requirements, cost estimates, environmental assessments, or environmental impact reports and archeological reports.

(b) An Indian tribe or tribal organization is not required to request this information prior to submitting a notification of intent to contract or a contract proposal.

(c) The Secretary shall have a continuing responsibility to furnish information.

§ 900.121 What happens during the preplanning phase and can an Indian tribe or tribal organization perform any of the activities involved in this process?

(a) The application and ranking process for developing a priority listing of projects varies between agencies. There are, however, steps in the selection process that are common to most selection processes. An Indian tribe or tribal organization that wishes to secure a construction project should contact the appropriate agency to determine the specific steps involved in the application and selection process used to fund specific types of projects. When a priority process is used in the selection of construction projects, the steps involved in the application and ranking process are as follows:

(1) *Application.* The agency solicits applications from Indian tribes or tribal organizations. In the request for applications, the Secretary provides specific information regarding the type of project to be funded, the objective criteria that will be used to evaluate applications, the points or weight that each criterion will be assigned, and the time when applications are due. An Indian tribe or tribal organization may prepare the application (technical assistance from the agency, within resources available, shall be provided upon request from an Indian tribe or tribal organization) or may rely upon the agency to prepare the application.

(2) *Ranking/Prioritization.* The Secretary evaluates the applications based on the criteria provided as part of the application preparation process. The Secretary applies only criteria and weights assigned to each criteria that were disclosed to the Indian tribe or tribal organization during the application stage. The applications are then ranked in order from the application that best meets application criteria to the application that least meet the application criteria.

(3) *Validation.* Before final acceptance of a ranked application, the information, such as demographic information, deficiency levels reported in application, the condition of existing facilities, and program housing needs, is validated. During this process, additional information may be developed by the Indian tribe or tribal organization in support of the original information or the Secretary may designate a representative of the Department to conduct an on-site review of the information contained in the application.

(b) [Reserved]

§ 900.122 What does an Indian tribe or tribal organization do if it wants to secure a construction contract?

(a) The Act establishes a special process for review and negotiation of proposals for construction contracts which is different than that for other self-determination contract proposals. The Indian tribe or tribal organization should notify the Secretary of its intent to contract. After notification, the Indian tribe or tribal organization should prepare its contract proposal in accordance with the sections of this subpart. While developing its construction contract proposal, the Indian tribe or tribal organization can request technical assistance from the Secretary. Not later than 30 days after receiving a request from an Indian tribe or tribal organization, the Secretary shall provide to the Indian tribe or tribal organization all information available about the construction project, including construction drawings, maps, engineering reports, design reports, plans of requirements, cost estimates, environmental assessments, or environmental impact reports, and archaeological reports. The responsibility of the Secretary to furnish this information shall be a continuing one.

(b) At the request of the Indian tribe or tribal organization and before finalizing its construction contract proposal, the Secretary shall provide for a precontract negotiation phase during the development of a contract proposal. Within 30 days the Secretary shall acknowledge receipt of the proposal and, if requested by the Indian tribe or tribal organization, shall confer with the Indian tribe or tribal organization to develop a negotiation schedule. The negotiation phase shall include, at a minimum:

(1) The provision of technical assistance under section 103 of the Act and paragraph (a) of this section;

(2) A joint scoping session between the Secretary and the Indian tribe or tribal organization to review all plans, specifications, engineering reports, cost estimates, and other information available to the parties, for the purpose of identifying all areas of agreement and disagreement;

(3) An opportunity for the Secretary to revise plans, designs, or cost estimates of the Secretary in response to concerns raised, or information provided by, the Indian tribe or tribal organization;

(4) A negotiation session during which the Secretary and the Indian tribe or tribal organization shall seek to develop a mutually agreeable contract proposal; and

(5) Upon the request of the Indian tribe or tribal organization, the use of alternative dispute resolution to resolve remaining areas of disagreement under the dispute resolution provisions under subchapter IV of chapter 5 of the United States Code.

§ 900.123 What happens if the Indian tribe or tribal organization and the Secretary cannot develop a mutually agreeable contract proposal?

(a) If the Secretary and the Indian tribe or tribal organization are unable to develop a mutually agreeable construction contract proposal under the procedures in § 900.122, the Indian tribe or tribal organization may submit a final contract proposal to the Secretary. Not later than 30 days after receiving the final contract proposal, the Secretary shall approve the contract proposal and award the contract, unless, during the period the Secretary declines the proposal under sections 102(a)(2) and 102(b) of the Act (including providing opportunity for an appeal under section 102(b)).

(b) Whenever the Secretary declines to enter into a self-determination contract or contracts under section 102(a)(2) of the Act, the Secretary shall:

(1) State any objections to the contract proposal (as submitted by the Indian tribe or tribal organization) in writing and provide all documents relied on in making the declination decision within 20 days of such decision to the Indian tribe or tribal organization;

(2) Provide assistance to the Indian tribe or tribal organization to overcome the stated objections;

(3) Provide the Indian tribe or tribal organization with a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter and the opportunity for appeal on the objections raised, under the regulations set forth in subpart L, except that the Indian tribe or tribal organization may, in lieu of filing the appeal, initiate an action in a Federal district court and proceed directly under section 110(a) of the Act.

§ 900.124 May the Indian tribe or tribal organization to use a grant in lieu of a contract?

Yes. A grant agreement or a cooperative agreement may be used in lieu of a contract under sections 102 and 103 of the Act when agreed to by the Secretary and the Indian tribe or tribal

organization. Under the grant concept, the grantee will assume full responsibility and accountability for design and construction performance within the funding limitations. The grantee will manage and administer the work with minimal involvement by the government. The grantee will be expected to have acceptable management systems for finance, procurement, and property. The Secretary may issue Federal construction guidelines and manuals applicable to its construction programs, and the government shall accept tribal proposals for alternatives which are consistent with or exceed Federal guidelines or manuals applicable to construction programs.

§ 900.125 What shall a construction contract proposal contain?

(a) In addition to the full name, address, and telephone number of the Indian tribe or tribal organization submitting the construction proposal, a construction contract proposal shall contain descriptions of the following standards under which they propose to operate the contract:

(1) The use of licensed and qualified architects;

(2) Applicable health and safety standards;

(3) Adherence to applicable Federal, State, local, or tribal building codes and engineering standards;

(4) Structural integrity;

(5) Accountability of funds;

(6) Adequate competition for subcontracting under tribal or other applicable law;

(7) The commencement, performance, and completion of the contract;

(8) Adherence to project plans and specifications (including any applicable Federal construction guidelines and manuals and the Secretary shall accept tribal proposals for alternatives which are consistent with or exceed Federal guidelines or manuals applicable to construction programs);

(9) The use of proper materials and workmanship;

(10) Necessary inspection and testing;

(11) With respect to the self-determination contract between the Indian tribe or tribal organization and Federal government, a process for changes, modifications, stop work, and termination of the work when warranted;

(b) In addition to provisions regarding the program standards listed in paragraph (a) of this section or the assurances listed in paragraph (c) of this section, the Indian tribe or tribal organization shall also include in its construction contract proposal the following:

(1) In the case of a contract for design activities, this statement, ''Construction documents produced as part of this contract will be produced in accordance with the Program of Requirements and/or Scope of Work,'' and the POR and/or Scope of Work shall be attached to the contract proposal. If tribal construction procedures, standards and methods (including national, regional, state, or tribal building codes or construction industry standards) are consistent with or exceed applicable Federal standards then the Secretary shall accept the tribally proposed standards; and

(2) In the case of a contract for construction activities, this statement, ''The facility will be built in accordance with the construction documents produced as a part of design activities. The project documents, including plans and specifications, are hereby incorporated into this contract through this reference.'' If tribal construction procedures, standards and methods (including national, regional, state, or tribal building codes or construction industry standards) are consistent with or exceed applicable Federal standards then the Secretary shall accept the tribally proposed standards; and

(3) Proposed methods to accommodate the responsibilities of the Secretary provided in § 900.131; and

(4) Proposed methods to accommodate the responsibilities of the Indian tribe or tribal organization provided in § 900.130 unless otherwise addressed in paragraph (a) of this section and minimum staff qualifications proposed by the Indian tribe or tribal organization, if any;

(5) A contract budget as described in § 900.127; and

(6) A period of performance for the conduct of all activities to be contracted;

(7) A payment schedule as described in § 900.132;

(8) A statement indicating whether or not the Indian tribe or tribal organization has a CMS contract related to this project;

(9) Current (unrevoked) authorizing resolutions in accordance with § 900.5(d) from all Indian tribes benefitting from the contract proposal; and

(10) Any responsibilities, in addition to the Federal responsibilities listed in § 900.131, which the Indian tribe or tribal organization proposes the Federal government perform to assist with the completion of the scope of work;

(c) The Indian tribe or tribal organization will provide the following assurances in its contract proposal:

(1) If the Indian tribe or tribal organization elects not to take title (pursuant to subpart I) to Federal property used in carrying out the contract, ''The Indian tribe or tribal organization will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. The Indian tribe or tribal organization will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project''; and

(2) ''The Indian tribe or tribal organization will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.)'' which prohibits the use of lead based paint in construction or rehabilitation of residential structures;

(3) ''The Indian tribe or tribal organization will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646),'' which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal participation in purchases; and

(4) ''Except for work performed by tribal or tribal organization employees, the Indian tribe or tribal organization will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276c and 18 U.S.C. 874),'' for Federally assisted construction subagreements;

(5) ''The Indian tribe or tribal organization will comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234),'' which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more;

(6) ''The Indian tribe or tribal organization will comply with all applicable Federal environmental laws, regulations, and Executive Orders;''

(7) ''The Indian tribe or tribal organization will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting the components or potential components of the national wild and scenic rivers system;''

(8) ''The Indian tribe or tribal organization will assist the awarding agency in assuring compliance with

section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and preservation of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).''

(d) The Indian tribe or tribal organization and the Secretary will both make a good faith effort to identify any other applicable Federal laws, Executive Orders, or regulations applicable to the contract, share them with the other party, and refer to them in the construction contract. The parties will make a good faith effort to identify tribal laws, ordinances, and resolutions which may affect either party in the performance of the contract.

§ 900.126 Shall a construction contract proposal incorporate provisions of Federal construction guidelines and manuals?

Each agency may provide or the Indian tribe or tribal organization may request Federal construction guidelines and manuals for consideration by the Indian tribe or tribal organization in the preparation of its contract proposal. If tribal construction procedures, standards and methods (including national, regional, State, or tribal building codes or construction industry standards) are consistent with or exceed applicable Federal standards, the Secretary shall accept the tribally proposed standards.

§ 900.127 What can be included in the Indian tribe or tribal organization's contract budget?

(a) The costs incurred will vary depending on which phase (see § 900.112) of the construction process the Indian tribe or tribal organization is conducting and the type of contract that will be used. The total amount awarded under a construction contract shall reflect an overall fair and reasonable price to the parties (see § 900.129).

(b) Costs for activities under this subpart that have not been billed, allocated, or recovered under a contract issued under section 108 of the Act should be included.

(c) The Indian tribe or tribal organization's budget should include the cost elements that reflect an overall fair and reasonable price. These costs include:

(1) The reasonable costs to the Indian tribe or tribal organization of performing the contract, taking into consideration the terms of the contract and the requirements of the Act and any other applicable law;

(2) The costs of preparing the contract proposal and supporting cost data;

(3) The costs associated with auditing the general and administrative costs of the Indian tribe or tribal organization associated with the management of the construction contract; and

(4) In cases where the Indian tribe or tribal organization is submitting a fixed-price construction contract:

(i) The reasonable costs to the Indian tribe or tribal organization for general administration incurred in connection with the project that is the subject of the contract;

(ii) The ability of the contractor that carries out the construction contract to make a reasonable profit, taking into consideration the risks associated with carrying out the contract, local market conditions, and other relevant considerations.

(d) In establishing a contract budget for a construction project, the Secretary shall not be required to identify separately the components described in paragraphs (c)(4)(i) and (c)(4)(ii) of this section.

(e) The Indian tribe or tribal organization's budget proposal includes a detailed budget breakdown for performing the scope of work including a total ''not to exceed'' dollar amount with which to perform the scope of work. Specific budget line items, if requested by the Indian tribe or tribal organization, can include the following:

(1) The administrative costs the Indian tribe or tribal organization may incur including:

(i) Personnel needed to provide administrative oversight of the contract;

(ii) Travel costs incurred, both local travel incurred as a direct result of conducting the contract and remote travel necessary to review project status with the Secretary;

(iii) Meeting costs incurred while meeting with community residents to develop project documents;

(iv) Fees to be paid to consultants, such as demographic consultants, planning consultants, attorneys, accountants, and personnel who will provide construction management services;

(2) The fees to be paid to architects and engineers to assist in preparing project documents and to assist in oversight of the construction process;

(3) The fees to be paid to develop project surveys including topographical surveys, site boundary descriptions, geotechnical surveys, archeological surveys, and NEPA compliance, and;

(4) In the case of a contract to conduct project construction activities, the fees to provide a part-time or full-time on-site inspector, depending on the terms of the contract, to monitor construction activities;

(5) In the case of a contract to conduct project construction activities, project site development costs;

(6) In the case of a contract to conduct project construction activities, project construction costs including those costs described in paragraph (c)(4), of this section;

(7) The cost of securing and installing moveable equipment, telecommunications and data processing equipment, furnishings, including works of art, and special purpose equipment when part of a construction contract;

(8) A contingency amount for unanticipated conditions of the construction phase of cost-reimbursable contracts. The amount of the contingency provided shall be 3 percent of activities being contracted or 50 percent of the available contingency funds, whichever is greater. In the event provision of required contingency funds will cause the project to exceed available project funds, the discrepancy shall be reconciled in accordance with § 900.129(e). Any additional contingency funds for the construction phase will be negotiated on an as-needed basis subject to the availability of funds and the nature, scope, and complexity of the project. Any contingency for other phases will be negotiated on a contract-by-contract basis. Unused contingency funds obligated to the contract and remaining at the end of the contract will be considered savings.

(9) Other costs incurred that are directly related to the conduct of contract activities.

§ 900.128 What funding shall the Secretary provide in a construction contract?

The Secretary shall provide an amount under a construction contract that reflects an overall fair and reasonable price to the parties. These costs include:

(a) The reasonable costs to the Indian tribe or tribal organization of performing the contract, taking into consideration the terms of the contract and the requirements of the Act and any other applicable law;

(b) The costs of preparing the contract proposal and supporting cost data; and

(c) The costs associated with auditing the general and administrative costs of the tribal organization associated with the management of the construction contract; and

(d) If the Indian tribe or tribal organization is submitting a fixed-price construction contract:

(1) The reasonable costs to the Indian tribe or tribal organization for general administration incurred in connection

with the project that is the subject of the contract;

(2) The ability of the contractor that carries out the construction contract to make a reasonable profit, taking into consideration the risks associated with carrying out the contract, local market conditions, and other relevant considerations including but not limited to contingency.

(3) In establishing a contract budget for a construction project, the Secretary is not required to identify separately the components described in paragraph (d) (1) and (d) (2) of this sections.

§ 900.129 How do the Secretary and Indian tribe or tribal organization arrive at an overall fair and reasonable price for the performance of a construction contract?

(a) Throughout the contract award process, the Secretary and Indian tribe or tribal organization shall share all construction project cost information available to them in order to facilitate reaching agreement on an overall fair and reasonable price for the project or part thereof. In order to enhance this communication, the government's estimate of an overall fair and reasonable price shall:

(1) Contain a level of detail appropriate to the nature and phase of the work and sufficient to allow comparisons to the Indian tribe or tribal organization's estimate;

(2) Be prepared in a format coordinated with the Indian tribe or tribal organization; and

(3) Include the cost elements contained in section 105(m)(4) of the Act.

(b) The government's cost estimate shall be an independent cost estimate based on such information as the following:

(1) Prior costs to the government for similar projects adjusted for comparison to the target location, typically in unit costs, such as dollars per pound, square meter cost of building, or other unit cost that can be used to make a comparison;

(2) Actual costs previously incurred by the Indian tribe or tribal organization for similar projects;

(3) Published price lists, to include regional adjustment factors, for materials, equipment, and labor; and

(4) Projections of inflation and cost trends, including projected changes such as labor, material, and transportation costs.

(c) The Secretary shall provide the initial government cost estimate to the Indian tribe or tribal organization and make appropriate revisions based on concerns raised or information provided by the Indian tribe or tribal organization. The Secretary and the Indian tribe or tribal organization shall continue to revise, as appropriate, their respective cost estimates based on changed or additional information such as the following:

(1) Actual subcontract bids;

(2) Changes in inflation rates and market conditions, including local market conditions;

(3) Cost and price analyses conducted by the Secretary and the Indian tribe or tribal organization during negotiations;

(4) Agreed-upon changes in the size, scope and schedule of the construction project; and

(5) Agreed-upon changes in project plans and specifications.

(d) Considering all of the information available, the Secretary and the Indian tribe or tribal organization shall negotiate the amount of the construction contract. The objective of the negotiations is to arrive at an amount that is fair under current market conditions and reasonable to both the government and the Indian tribe or tribal organization. As a result, the agreement does not necessarily have to be in strict conformance with either party's cost estimate nor does agreement have to be reached on every element of cost, but only on the overall fair and reasonable price of each phase of the work included in the contract.

(e) If the fair and reasonable price arrived at under paragraph (d) of this section would exceed the amount available to the Secretary, then:

(1) If the Indian tribe or tribal organization elects to submit a final proposal, the Secretary may decline the proposal under section 105(m)(4)(C)(v) of the Act or if the contract has been awarded, dispute the matter under the Contract Disputes Act; or

(2) If requested by the Indian tribe or tribal organization:

(i) The Indian tribe or tribal organization and the Secretary may jointly explore methods of expanding the available funds through the use of contingency funds, advance payments in accordance with § 900.132, rebudgeting, or seeking additional appropriations; or

(ii) The Indian tribe or tribal organization may elect to propose a reduction in project scope to bring the project price within available funds; or

(iii) The Secretary and Indian tribe or tribal organization may agree that the project be executed in phases.

§ 900.130 What role does the Indian tribe or tribal organization play during the performance of a self-determination construction contract?

(a) The Indian tribe or tribal organization is responsible for the successful completion of the project in accordance with the approved contract documents.

(b) If the Indian tribe or tribal organization is contracting to perform design phase activities, the Indian tribe or tribal organization shall have the following responsibilities:

(1) The Indian tribe or tribal organization shall subcontract with or provide the services of licensed and qualified architects and other consultants needed to accomplish the self-determination construction contract.

(2) The Indian tribe or tribal organization shall administer and disburse funds provided through the contract in accordance with subpart F, § 900.42 through § 900.45 and implement a property management system in accordance with subpart F, § 900.51 through § 900.60.

(3) The Indian tribe or tribal organization shall direct the activities of project architects, engineers, and other project consultants, facilitate the flow of information between the Indian tribe or tribal organization and its subcontractors, resolve disputes between the Indian tribe or tribal organization and its subcontractors or between its subcontractors, and monitor the work produced by its subcontractors to ensure compliance with the POR.

(4) The Indian tribe or tribal organization shall direct the work of its subcontractors so that work produced is provided in accordance with the contract budget and contract performance period as negotiated between and agreed to by the parties.

(5) The Indian tribe or tribal organization shall provide the Secretary with an opportunity to review and provide written comments on the project plans and specifications only at the concept phase, the schematic phase (or the preliminary design), the design development phase, and the final construction documents phase and approve the project plans and specifications for general compliance with contract requirements only at the schematic phase (or the preliminary design) and the final construction documents phase or as otherwise negotiated.

(6) The Indian tribe or tribal organization shall provide the Secretary with the plans and specifications after their final review so, if needed, the Secretary may obtain an independent government cost estimate in accordance with § 900.131(b)(4) for the construction of the project.

(7) The Indian tribe or tribal organization shall retain project records and design documents for a minimum of

3 years following completion of the contract.

(8) The Indian tribe or tribal organization shall provide progress reports and financial status reports quarterly, or as negotiated, that contain a narrative of the work accomplished, including but not limited to descriptions of contracts, major subcontracts, and modifications implemented during the report period and A/E service deliverables, the percentage of the work completed, a report of funds expended during the reporting period, and total funds expended for the project. The Indian tribe or tribal organization shall also provide copies, for the information of the Secretary, of an initial work and payment schedule and updates as they may occur.

(c) If the Indian tribe or tribal organization is contracting to perform project construction phase activities, the Indian tribe or tribal organization shall have the following responsibilities:

(1) The Indian tribe or tribal organization shall subcontract with or provide the services of licensed and qualified architects and other consultants as needed to accomplish the self-determination construction contract.

(2) The Indian tribe or tribal organization shall administer and dispense funds provided through the contract in accordance with subpart F, § 900.42 through § 900.45 and implement a property management system in accordance with subpart F, § 900.51 through § 900.60.

(3) The Indian tribe or tribal organization shall subcontract with or provide the services of construction contractors or provide its own forces to conduct construction activities in accordance with the project construction documents or as otherwise negotiated between and agreed to by the parties.

(4) The Indian tribe or tribal organization shall direct the activities of project architects, engineers, construction contractors, and other project consultants, facilitate the flow of information between the Indian tribe or tribal organization and its subcontractors, resolve disputes between itself and its subcontractors or between its subcontractors, and monitor the work produced by its subcontractors to assure compliance with the project plans and specifications.

(5) The Indian tribe or tribal organization shall manage or provide for the management of day-to-day activities of the contract including the issuance of construction change orders to subcontractors except that, unless the Secretary agrees:

(i) The Indian tribe or tribal organization may not issue a change order to a construction subcontractor that will cause the Indian tribe or tribal organization to exceed its self-determination contract budget;

(ii) The Indian tribe or tribal organization may not issue a change order to a construction subcontractor that will cause the Indian tribe or tribal organization to exceed the performance period in its self-determination contract budget; or

(iii) The Indian tribe or tribal organization may not issue to a construction subcontractor a change order that is a significant departure from the scope or objective of the project.

(6) The Indian tribe or tribal organization shall direct the work of its subcontractors so that work produced is provided in accordance with the contract budget and performance period as negotiated between and agreed to by the parties.

(7) The Indian tribe or tribal organization shall provide to the Secretary progress and financial status reports.

(i) The reports shall be provided quarterly, or as negotiated, and shall contain a narrative of the work accomplished, the percentage of the work completed, a report of funds expended during the reporting period, and total funds expended for the project.

(ii) The Indian tribe or tribal organization shall also provide copies, for the information of the Secretary, of an initial schedule of values and updates as they may occur, and an initial construction schedule and updates as they occur.

(8) The Indian tribe or tribal organization shall maintain on the job-site or project office, and make available to the Secretary during monitoring visits: contracts, major subcontracts, modifications, construction documents, change orders, shop drawings, equipment cut sheets, inspection reports, testing reports, and current redline drawings.

(d) Upon completion of the project, the Indian tribe or tribal organization shall provide to the Secretary a reproducible copy of the record plans and a contract closeout report.

(e) For cost-reimbursable projects, the Indian tribe or tribal organization shall not be obligated to continue performance that requires an expenditure of more funds than were awarded under the contract. If the Indian tribe or tribal organization has a reason to believe that the total amount required for performance of the contract will be greater than the amount of funds awarded, it shall provide reasonable notice to the Secretary. If the Secretary does not increase the amount of funds awarded under the contract, the Indian tribe or tribal organization may suspend performance of the contract until sufficient additional funds are awarded.

§ 900.131 What role does the Secretary play during the performance of a self-determination construction contract?

(a) If the Indian tribe or tribal organization is contracting solely to perform construction management services either under this subpart or section 108 of the Act, the Secretary has the following responsibilities:

(1) The Secretary is responsible for the successful completion of the project in accordance with the approved contract documents. In fulfilling those responsibilities, the Secretary shall consult with the Indian tribe or tribal organization on a regular basis as agreed to by the parties to facilitate the exchange of information between the Indian tribe or tribal organization and Secretary;

(2) The Secretary shall provide the Indian tribe or tribal organization with regular opportunities to review work produced to determine compliance with the following documents:

(i) The POR, during the conduct of design phase activities. The Secretary shall provide the Indian tribe or tribal organization with an opportunity to review the project construction documents at the concept phase, the schematic phase, the design development phase, and the final construction documents phase, or as otherwise negotiated. Upon receipt of project construction documents for review, the Indian tribe or tribal organization shall not take more than 21 days to make available to the Secretary any comments or objections to the construction documents as submitted by the Secretary. Resolution of any comments or objections shall be in accordance with dispute resolution procedures as agreed to by the parties and contained in the contract; or

(ii) The project construction documents, during conduct of the construction phase activities. The Indian tribe or tribal organization shall have the right to conduct monthly or critical milestone on-site monitoring visits or as negotiated with the Secretary;

(b) If the Indian tribe or tribal organization is contracting to perform design and/or construction phase activities, the Secretary shall have the following responsibilities:

(1) In carrying out the responsibilities of this section, and specifically in carrying out review, comment, and approval functions under this section, the Secretary shall provide for full tribal participation in the decision making process and shall honor tribal preferences and recommendations to the greatest extent feasible. This includes promptly notifying the Indian tribe or tribal organization of any concerns or issues in writing that may lead to disapproval, meeting with the Indian tribe or tribal organization to discuss these concerns and issues and to share relevant information and documents, and making a good faith effort to resolve all issues and concerns of the Indian tribe or tribal organization. The time allowed for Secretarial review, comment, and approval shall be no more than 21 days per review unless a different time period is negotiated and specified in individual contracts. The 21-day time period may be extended if the Indian tribe or tribal organization agrees to the extension in writing. Disagreements over the Secretary's decisions in carrying out these responsibilities shall be handled under subpart N governing contract disputes under the Contract Disputes Act.

(2) To the extent the construction project is subject to NEPA or other environmental laws, the appropriate Secretary shall make the final determination under such laws. All other environmentally related functions are contractible.

(3) If the Indian tribe or tribal organization conducts planning activities under this subpart, the Secretary shall review and approve final planning documents for the project to ensure compliance with applicable planning standards.

(4) When a contract or portion of a contract is for project construction activities, the Secretary may rely on the Indian tribe or tribal organization's cost estimate or the Secretary may obtain an independent government cost estimate that is derived from the final project plans and specifications. The Secretary shall obtain the cost estimate, if any, within 90 days or less of receiving the final plans and specifications from the Indian tribe or tribal organization and shall provide all supporting documentation of the independent cost estimate to the Indian tribe or tribal organization within the 90 day time limit.

(5) If the contracted project involves design activities, the Secretary shall have the authority to review for general compliance with the contract requirements and provide written comments on the project plans and specifications only at the concept phase, the schematic phase, the design development phase and the final construction documents phase, and approve for general compliance with contract requirements the project plans and specifications only at the schematic phase and the final construction documents phase or as otherwise negotiated.

(6) If the contracted project involves design activities, the Secretary reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, for Federal government purposes:

(i) The copyright in any work developed under a contract or subcontract of this subpart; and

(ii) Any rights of copyright to which an Indian tribe or tribal organization or a tribal subcontractor purchases ownership through this contract.

(7) Changes that require an increase to the negotiated contract budget or an increase in the negotiated performance period or are a significant departure from the scope or objective of the project shall require approval of the Secretary.

(8) Review and comment on specific shop drawings as negotiated and specified in individual contracts.

(9) The Secretary may conduct monthly on-site monitoring visits, or alternatively if negotiated with the Indian tribe or tribal organization, critical milestone on-site monitoring visits.

(10) The Secretary retains the right to conduct final project inspections jointly with the Indian tribe or tribal organization and to accept the building or facility. If the Secretary identifies problems during final project inspections the information shall be provide to the Indian tribe or tribal organization and shall be limited to items that are materially noncompliant.

(11) The Secretary can require an Indian tribe or tribal organization to suspend work under a contract in accordance with this paragraph. The Secretary may suspend a contract for no more than 30 days unless the Indian tribe or tribal organization has failed to correct the reason(s) for the suspension or unless the cause of the suspension cannot be resolved through either the efforts of the Secretary or the Indian tribe or tribal organization.

(i) The following are reasons the Secretary may suspend work under a self-determination contract for construction:

(A) Differing site conditions encountered upon commencement of construction activities that impact health or safety concerns or shall require an increase in the negotiated project budget;

(B) The Secretary discovers materially non-compliant work;

(C) Funds allocated for the project that is the subject of this contract are rescinded by Congressional action; or

(D) Other Congressional actions occur that materially affect the subject matter of the contract.

(ii) If the Secretary wishes to suspend the work, the Secretary shall first provide written notice and an opportunity for the Indian tribe or tribal organization to correct the problem. The Secretary may direct the Indian tribe or tribal organization to suspend temporarily work under a contract only after providing a minimum of 5 working days' advance written notice to the Indian tribe or tribal organization describing the nature of the performance deficiencies or imminent safety, health or environmental issues which are the cause for suspending the work.

(iii) The Indian tribe or tribal organization shall be compensated for reasonable costs, including but not limited to overhead costs, incurred due to any suspension of work that occurred through no fault of the Indian tribe or tribal organization.

(iv) Disputes arising as a result of a suspension of the work by the Secretary shall be subject to the Contract Disputes Act or any other alternative dispute resolution mechanism as negotiated between and agreed to by the parties and contained in the contract.

(12) The Secretary can terminate the project for cause in the event non-compliant work is not corrected through the suspension process specified in paragraph (11) of this section.

(13) The Secretary retains authority to terminate the project for convenience for the following reasons:

(i) Termination for convenience is requested by the Indian tribe or tribal organization;

(ii) Termination for convenience is requested by the Secretary and agreed to by the Indian tribe or tribal organization;

(iii) Funds allocated for the project that is the subject of the contract are rescinded by Congressional action;

(iv) Other Congressional actions take place that affect the subject matter of the contract;

(v) If the Secretary terminates a self-determination construction contract for convenience, the Secretary shall provide the Indian tribe or tribal organization 21 days advance written notice of intent to terminate a contract for convenience; or

(vi) The Indian tribe or tribal organization shall be compensated for

reasonable costs incurred due to termination of the contract.

§ 900.132 Once a contract and/or grant is awarded, how will the Indian tribe or tribal organization receive payments?

(a) A schedule for advance payments shall be developed based on progress, need, and other considerations in accordance with applicable law. The payment schedule shall be negotiated by the parties and included in the contract. The payment schedule may be adjusted as negotiated by the parties during the course of the project based on progress and need.

(b) Payments shall be made to the Indian tribe or tribal organization according to the payment schedule contained in the contract. If the contract does not provide for the length of each allocation period, the Secretary shall make payments to the Indian tribe or tribal organization at least quarterly. Each allocation shall be adequate to provide funds for the contract activities anticipated to be conducted during the allocation period, except that:

(1) The first allocation may be greater than subsequent allocations and include mobilization costs, and contingency funds described in § 900.128(e)(8); and

(2) Any allocation may include funds for payment for materials that will be used during subsequent allocation periods.

(c) The Indian tribe or tribal organization may propose a schedule of payment amounts measured by time or measured by phase of the project (e.g., planning, design, construction).

(d) The amount of each payment allocation shall be stated in the Indian tribe or tribal organization's contract proposal. Upon award of the contract, the Secretary shall transfer the amount of the first allocation to the Indian tribe or tribal organization within 21 days after the date of contract award. The second allocation shall be made not later than 7 days before the end of the first allocation period.

(e) Not later than 7 days before the end of each subsequent allocation period after the second allocation, the Secretary shall transfer to the Indian tribe or tribal organization the amount for the next allocation period, unless the Indian tribe or tribal organization is delinquent in submission of allocation period progress reports and financial reports or the Secretary takes action to suspend or terminate the contract in accordance with § 900.131(b)(11), § 900.131(b)(12), or § 900.131(b)(13).

§ 900.133 Does the declination process or the Contract Dispute Act apply to construction contract amendments proposed either by an Indian tribe or tribal organization or the Secretary?

The Contract Disputes Act generally applies to such amendments. However, the declination process and the procedures in § 900.122 and § 900.123 apply to the proposal by an Indian tribe or tribal organization when the proposal is for a new project, a new phase or discreet stage of a phase of a project, or an expansion of a project resulting from an additional allocation of funds by the Secretary under § 900.120.

§ 900.134 At the end of a self-determination construction contract, what happens to savings on a cost-reimbursement contract?

The savings shall be used by the Indian tribe or tribal organization to provide additional services or benefits under the contract. Unexpended contingency funds obligated to the contract, and remaining at the end of the contract, are savings. No further approval or justifying documentation by the Indian tribe or tribal organization shall be required before expenditure of funds.

§ 900.135 May the time frames for action set out in this subpart be reduced?

Yes. The time frames in this subpart are intended to be maximum times and may be reduced based on urgency and need, by agreement of the parties. If the Indian tribe or tribal organization requests reduced time frames for action due to unusual or special conditions (such as limited construction periods), the Secretary shall make a good faith effort to accommodate the requested time frames.

§ 900.136 Do tribal employment rights ordinances apply to construction contracts and subcontracts?

Yes. Tribal employment rights ordinances do apply to construction contracts and subcontracts pursuant to § 7(b) and § 7(c) of the Act.

§ 900.137 Do all provisions of the other subparts apply to contracts awarded under this subpart?

Yes, except as otherwise provided in this subpart and unless excluded as follows: programmatic reports and data requirements, reassumption, contract review and approval process, contract proposal contents, and § 900.150 (d) and (e) of these regulations.

Subpart K—Waiver Procedures

§ 900.140 Can any provision of the regulations under this Part be waived?

Yes. Upon the request of an Indian tribe or tribal organization, the Secretary shall waive any provision of these regulations, including any cost principles adopted by the regulations under this part, if the Secretary finds that granting the waiver is either in the best interest of the Indians served by the contract, or is consistent with the policies of the Act and is not contrary to statutory law.

§ 900.141 How does an Indian tribe or tribal organization get a waiver?

To obtain a waiver, an Indian tribe or tribal organization shall submit a written request to the Secretary identifying the regulation to be waived and the basis for the request. The Indian tribe or tribal organization shall explain the intended effect of the waiver, the impact upon the Indian tribe or tribal organization if the waiver is not granted, and the specific contract(s) to which the waiver will apply.

§ 900.142 Does an Indian tribe or tribal organization's waiver request have to be included in an initial contract proposal?

No. Although a waiver request may be included in a contract proposal, it can also be submitted separately.

§ 900.143 How is a waiver request processed?

The Secretary shall approve or deny a waiver within 90 days after the Secretary receives a written waiver request. The Secretary's decision shall be in writing. If the requested waiver is denied, the Secretary shall include in the decision a full explanation of the basis for the decision.

§ 900.144 What happens if the Secretary makes no decision within the 90-day period?

The waiver request is deemed approved.

§ 900.145 On what basis may the Secretary deny a waiver request?

Consistent with section 107(e) of the Act, the Secretary may only deny a waiver request based on a specific written finding. The finding must clearly demonstrate (or be supported by controlling legal authority) that if the waiver is granted:

(a) The service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory;

(b) Adequate protection of trust resources is not assured;

(c) The proposed project or function to be contracted for cannot be properly

completed or maintained by the proposed contract;

(d) The amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under section 106(a) of the Act; or

(e) The program, function, service, or activity (or portion of it) that is the subject of the proposal is beyond the scope of programs, functions, services, or activities that are contractible under the Act because the proposal includes activities that cannot lawfully be carried out by the contractor.

§ 900.146 Is technical assistance available for waiver requests?

Yes. Technical assistance is available as provided in section 900.7 to prepare a waiver request or to overcome any stated objection which the Secretary might have to the request.

§ 900.147 What appeal rights are available?

If the Secretary denies a waiver request, the Indian tribe or tribal organization has the right to appeal the decision and request a hearing on the record under the procedures for hearings and appeals contained in subpart L of these regulations. Alternatively, the Indian tribe or tribal organization may sue in Federal district court to challenge the Secretary's action.

§ 900.148 How can an Indian tribe or tribal organization secure a determination that a law or regulation has been superseded by the Indian Self-Determination Act, as specified in section 107(b) of the Act?

Any Indian tribe or tribal organization may at any time submit a request to the Secretary for a determination that any law or regulation has been superseded by the Act and that the law has no applicability to any contract or proposed contract under the Act. The Secretary is required to provide an initial decision on such a request within 90 days after receipt. If such a request is denied, the Indian tribe or tribal organization may appeal under Subpart L of these regulations. The Secretary shall provide notice of each determination made under this Subpart to all Indian tribes and tribal organizations.

Subpart L—Appeals

Appeals Other Than Emergency Reassumption and Suspension, Withholding or Delay in Payment

§ 900.150 What decisions can an Indian tribe or tribal organization appeal under this Subpart?

(a) A decision to decline to award a self-determination contract, or a portion thereof, under section 102 of the Act;

(b) A decision to decline to award a construction contract, or a portion thereof, under sections 105(m) and 102 of the Act;

(c) A decision to decline a proposed amendment to a self-determination contract, or a portion thereof, under section 102 of the Act;

(d) A decision not to approve a proposal, in whole or in part, to redesign a program;

(e) A decision to rescind and reassume a self-determination contract, in whole or in part, under section 109 of the Act except for emergency reassumptions;

(f) A decision to refuse to waive a regulation under section 107(e) of the Act;

(g) A disagreement between an Indian tribe or tribal organization and the Federal government over proposed reporting requirements;

(h) A decision to refuse to allow an Indian tribe or tribal organization to convert a contract to mature status, under section 4(h) of the Act;

(i) All other appealable pre-award decisions by a Federal official as specified in these regulations, whether an official of the Department of the Interior or the Department of Health and Human Services; or

(j) A decision relating to a request for a determination that a law or regulation has been superseded by the Act.

§ 900.151 Are there any appeals this subpart does not cover?

This subpart does not cover:

(a) Disputes which arise after a self-determination contract has been awarded, or emergency reassumption of self-determination contracts or suspension of payments under self-determination contracts, which are covered under § 900.170 through § 900.176 of these regulations.

(b) Other post-award contract disputes, which are covered under Subpart N.

(c) Denials under the Freedom of Information Act, 5 U.S.C. 552, which may be appealed under 43 CFR 2 for the Department of the Interior and 45 CFR 5 for the Department of Health and Human Services; and

(d) Decisions relating to the award of discretionary grants under section 103 of the Act, which may be appealed under 25 CFR 2 for the Department of the Interior, and under 45 CFR 5 for the Department of Health and Human Services.

§ 900.152 How does an Indian tribe or tribal organization know where and when to file its appeal from decisions made by agencies of DOI or DHHS?

Every decision in any of the ten areas listed above shall contain information which shall tell the Indian tribe or tribal organization where and when to file the Indian tribe or tribal organization's appeal. Each decision shall include the following statement:

Within 30 days of the receipt of this decision, you may request an informal conference under 25 CFR 900.154, or appeal this decision under 25 CFR 900.158 to the Interior Board of Indian Appeals (IBIA). Should you decide to appeal this decision, you may request a hearing on the record. An appeal to the IBIA under 25 CFR 900.158 shall be filed with the IBIA by certified mail or by hand delivery at the following address: Board of Indian Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203. You shall serve copies of your Notice of Appeal on the Secretary and on the official whose decision is being appealed. You shall certify to the IBIA that you have served these copies.

§ 900.153 Does an Indian tribe or tribal organization have any options besides an appeal?

Yes. The Indian tribe or tribal organization may request an informal conference. An informal conference is a way to resolve issues as quickly as possible, without the need for a formal hearing. The Indian tribe or tribal organization may also choose to sue in U.S. District Court under section 102(b)(3) and section 110(a) of the Act.

§ 900.154 How does an Indian tribe or tribal organization request an informal conference?

The Indian tribe or tribal organization shall file its request for an informal conference with the office of the person whose decision it is appealing, within 30 days of the day it receives the decision. The Indian tribe or tribal organization may either hand-deliver the request for an informal conference to that person's office, or mail it by certified mail, return receipt requested. If the Indian tribe or tribal organization mails the request, it will be considered filed on the date the Indian tribe or tribal organization mailed it by certified mail.

§ 900.155 How is an informal conference held?

(a) The informal conference shall be held within 30 days of the date the request was received, unless the Indian tribe or tribal organization and the authorized representative of the Secretary agree on another date.

(b) If possible, the informal conference will be held at the Indian tribe or tribal organization's office. If the meeting cannot be held at the Indian tribe or tribal organization's office and is held more than fifty miles from its office, the Secretary shall arrange to pay transportation costs and per diem for incidental expenses to allow for adequate representation of the Indian tribe or tribal organization.

(c) The informal conference shall be conducted by a designated representative of the Secretary.

(d) Only people who are the designated representatives of the Indian tribe or tribal organization, or authorized by the Secretary of Health and Human Services or by the appropriate agency of the Department of the Interior, are allowed to make presentations at the informal conference.

§ 900.156 What happens after the informal conference?

(a) Within 10 days of the informal conference, the person who conducted the informal conference shall prepare and mail to the Indian tribe or tribal organization a written report which summarizes what happened at the informal conference and a recommended decision.

(b) Every report of an informal conference shall contain the following language:

Within 30 days of the receipt of this recommended decision, you may file an appeal of the initial decision of the DOI or DHHS agency with the Interior Board of Indian Appeals (IBIA) under 25 CFR 900.157. You may request a hearing on the record. An appeal to the IBIA under 25 CFR 900.157 shall be filed with the IBIA by certified mail or hand delivery at the following address: Board of Indian Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203. You shall serve copies of your Notice of Appeal on the Secretary and on the official whose decision is being appealed. You shall certify to the IBIA that you have served these copies.

§ 900.157 Is the recommended decision always final?

No. If the Indian tribe or tribal organization is dissatisfied with the recommended decision, it may still appeal the initial decision within 30 days of receiving the recommended decision and the report of the informal conference. If the Indian tribe or tribal organization does not file a notice of appeal within 30 days, or before the expiration of the extension it has received under § 900.159, the recommended decision becomes final.

§ 900.158 How does an Indian tribe or tribal organization appeal the initial decision, if it does not request an informal conference or if it does not agree with the recommended decision resulting from the informal conference?

(a) If the Indian tribe or tribal organization decides to appeal, it shall file a notice of appeal with the IBIA within 30 days of receiving either the initial decision or the recommended decision.

(b) The Indian tribe or tribal organization may either hand-deliver the notice of appeal to the IBIA, or mail it by certified mail, return receipt requested. If the Indian tribe or tribal organization mails the Notice of Appeal, it will be considered filed on the date the Indian tribe or tribal organization mailed it by certified mail. The Indian tribe or tribal organization should mail the notice of appeal to: Board of Indian Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203.

(c) The Notice of Appeal shall:

(1) Briefly state why the Indian tribe or tribal organization thinks the initial decision is wrong;

(2) Briefly identify the issues involved in the appeal; and

(3) State whether the Indian tribe or tribal organization wants a hearing on the record, or whether the Indian tribe or tribal organization wants to waive its right to a hearing.

(d) The Indian tribe or tribal organization shall serve a copy of the notice of appeal upon the official whose decision it is appealing. The Indian tribe or tribal organization shall certify to the IBIA that it has done so.

(e) The authorized representative of the Secretary of Health and Human Services or the authorized representative of the Secretary of the Interior will be considered a party to all appeals filed with the IBIA under the Act.

§ 900.159 May an Indian tribe or tribal organization get an extension of time to file a notice of appeal?

Yes. If the Indian tribe or tribal organization needs more time, it can request an extension of time to file its Notice of Appeal within 60 days of receiving either the initial decision or the recommended decision resulting from the informal conference. The request of the Indian tribe or tribal organization shall be in writing, and shall give a reason for not filing its notice of appeal within the 30-day time period. If the Indian tribe or tribal organization has a valid reason for not filing its notice of appeal on time, it may receive an extension from the IBIA.

§ 900.160 What happens after an Indian tribe or tribal organization files an appeal?

(a) Within 5 days of receiving the Indian tribe or tribal organization's notice of appeal, the IBIA will decide whether the appeal falls under § 900.150(a) through § 900.150(g). If so, the Indian tribe or tribal organization is entitled to a hearing.

(1) If the IBIA determines that the appeal of the Indian tribe or tribal organization falls under § 900.150(h), § 900.150(i), or § 900.150(j), and the Indian tribe or tribal organization has requested a hearing, the IBIA will grant the request for a hearing unless the IBIA determines that there are no genuine issues of material fact to be resolved.

(2) If the IBIA cannot make that decision based on the information included in the notice of appeal, the IBIA may ask for additional statements from the Indian tribe or tribal organization, or from the appropriate Federal agency. If the IBIA asks for more statements, it will make its decision within 5 days of receiving those statements.

(b) If the IBIA decides that the Indian tribe or tribal organization is not entitled to a hearing or if the Indian tribe or tribal organization has waived its right to a hearing on the record, the IBIA will ask for the administrative record under 43 CFR 4.335. The IBIA shall tell the parties that the appeal will be considered under the regulations at 43 CFR 4, Subpart D, except the case shall be docketed immediately, without waiting for the 20-day period described in 43 CFR 4.336.

§ 900.161 How is a hearing arranged?

(a) If a hearing is to be held, the IBIA will refer the Indian tribe or tribal organization's case to the Hearings Division of the Office of Hearings and Appeals of the U.S. Department of the Interior. The case will then be assigned to an Administrative Law Judge (ALJ), appointed under 5 U.S.C. 3105.

(b) Within 15 days of the date of the referral, the ALJ will hold a pre-hearing conference, by telephone or in person, to decide whether an evidentiary hearing is necessary, or whether it is possible to decide the appeal based on the written record. At the pre-hearing conference the ALJ will provide for:

(1) A briefing and discovery schedule;

(2) A schedule for the exchange of information, including, but not limited

to witness and exhibit lists, if an evidentiary hearing is to be held;

(3) The simplification or clarification of issues;

(4) The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if an evidentiary hearing is to be held;

(5) The possibility of agreement disposing of all or any of the issues in dispute; and

(6) Such other matters as may aid in the disposition of the appeal.

(c) The ALJ shall order a written record to be made of any conference results that are not reflected in a transcript.

§ 900.162 What happens when a hearing is necessary?

(a) The ALJ shall hold a hearing within 60 days of the date of the order referring the appeal to the ALJ, unless the parties agree to have the hearing on a later date.

(b) At least 30 days before the hearing, the government agency shall file and serve the Indian tribe or tribal organization with a response to the notice of appeal.

(c) If the hearing is held more than 50 miles from the Indian tribe or tribal organization's office, the Secretary shall arrange to pay transportation costs and per diem for incidental expenses to allow for adequate representation of the Indian tribe or tribal organization.

(d) The hearing shall be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. 556.

§ 900.163 What is the Secretary's burden of proof for appeals from decisions under § 900.150(a) through § 900.150(g)?

For those appeals, the Secretary has the burden of proof (as required by section 102(e)(1) of the Act) to establish by clearly demonstrating the validity of the grounds for declining the contract proposal.

§ 900.164 What rights do Indian tribes, tribal organizations, and the government have during the appeal process?

Both the Indian tribe or tribal organization and the government agency have the same rights during the appeal process. These rights include the right to:

(a) Be represented by legal counsel;

(b) Have the parties provide witnesses who have knowledge of the relevant issues, including specific witnesses with that knowledge, who are requested by either party;

(c) Cross-examine witnesses;

(d) Introduce oral or documentary evidence, or both;

(e) Require that oral testimony be under oath;

(f) Receive a copy of the transcript of the hearing, and copies of all documentary evidence which is introduced at the hearing;

(g) Compel the presence of witnesses, or the production of documents, or both, by subpoena at hearings or at depositions;

(h) Take depositions, to request the production of documents, to serve interrogatories on other parties, and to request admissions; and

(i) Any other procedural rights under the Administrative Procedure Act, 5 U.S.C. 556.

§ 900.165 What happens after the hearing?

(a) Within 30 days of the end of the formal hearing or any post-hearing briefing schedule established by the ALJ, the ALJ shall send all the parties a recommended decision, by certified mail, return receipt requested. The recommended decision shall contain the ALJ's findings of fact and conclusions of law on all the issues. The recommended decision shall also state that the Indian tribe or tribal organization has the right to object to the recommended decision.

(b) If the appeal involves the Department of Health and Human Services, the recommended decision shall contain the following statement:

Within 30 days of the receipt of this recommended decision, you may file an objection to the recommended decision with the Secretary of Health and Human Services under 25 CFR 900.165(b). An appeal to the Secretary under 25 CFR 900.165(b) shall be filed at the following address: Department of Health and Human Services, 200 Independence Ave. S.W., Washington, DC, 20201. You shall serve copies of your notice of appeal on the official whose decision is being appealed. You shall certify to the Secretary that you have served this copy. If neither party files an objection to the recommended decision within 30 days, the recommended decision will become final.

(c) If the appeal involves the Department of the Interior, the recommended decision shall contain the following statement:

Within 30 days of the receipt of this recommended decision, you may file an objection to the recommended decision with the Interior Board of Indian Appeals (IBIA) under 25 CFR 900.165(c). An appeal to the IBIA under 25 CFR 900.165(c) shall be filed at the following address: Board of Indian Appeals, 4015 Wilson Boulevard, Arlington, VA 22203. You shall serve copies of your notice of appeal on the Secretary of the Interior, and on the official whose decision is being appealed. You shall certify to the IBIA that you have served these copies. If neither party files an objection to the recommended decision within 30 days, the recommended decision will become final.

§ 900.166 Is the recommended decision always final?

No. Any party to the appeal may file precise and specific written objections to the recommended decision, or any other comments, within 30 days of receiving the recommended decision. Objections shall be served on all other parties. The recommended decision shall become final 30 days after the Indian tribe or tribal organization receives the ALJ's recommended decision, unless a written statement of objections is filed with the Secretary of Health and Human Services or the IBIA during the 30-day period. If no party files a written statement of objections within 30 days, the recommended decision shall become final.

§ 900.167 If an Indian tribe or tribal organization objects to the recommended decision, what will the Secretary of Health and Human Services or the IBIA do?

(a) The Secretary of Health and Human Services or the IBIA has 20 days from the date it receives any timely written objections to modify, adopt, or reverse the recommended decision. If the Secretary of Health and Human Services or the IBIA does not modify or reverse the recommended decision during that time, the recommended decision automatically becomes final.

(b) When reviewing the recommended decision, the IBIA or the Secretary may consider and decide all issues properly raised by any party to the appeal, based on the record.

(c) The decision of the Secretary or the IBIA shall:

(1) Be in writing;

(2) Specify the findings of fact or conclusions of law which are modified or reversed;

(3) Give reasons for the decision, based on the record; and

(4) State that the decision is final for the Department.

§ 900.168 Will an appeal hurt the Indian tribe or tribal organization's position in other contract negotiations?

No. A pending appeal will not affect or prevent the negotiation or award of another contract.

§ 900.169 Will the decisions on appeals be available for the public to review?

Yes. The Secretary shall publish all final decisions from the ALJs, the IBIA, and the Secretary of Health and Human Services.

Appeals of Emergency Reassumption of Self-Determination Contracts or Suspensions, Withholding or Delay of Payments Under a Self-Determination Contract

§ 900.170 What happens in the case of emergency reassumption or suspension or withholding or delay of payments?

(a) This subpart applies when the Secretary gives notice to an Indian tribe or tribal organization that the Secretary intends to:

(1) Immediately rescind a contract or grant and reassume a program; or

(2) Suspend, withhold, or delay payment under a contract.

(b) When the Secretary advises an Indian tribe or tribal organization that the Secretary intends to take an action referred to in paragraph (a)(1) of this section, the Secretary shall also notify the Deputy Director of the Office of Hearings and Appeals, Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203.

§ 900.171 Will there be a hearing?

Yes. The Deputy Director of the Office of Hearings and Appeals shall appoint an Administrative Law Judge (ALJ) to hold a hearing.

(a) The hearing shall be held within 10 days of the date of the notice referred to in § 900.170 unless the Indian tribe or tribal organization agrees to a later date.

(b) If possible, the hearing will be held at the office of the Indian tribe or tribal organization. If the hearing is held more than 50 miles from the office of the Indian tribe or tribal organization, the Secretary shall arrange to pay transportation costs and per diem for incidental expenses. This will allow for adequate representation of the Indian tribe or tribal organization.

§ 900.172 What happens after the hearing?

(a) Within 30 days after the end of the hearing or any post-hearing briefing schedule established by the ALJ, the ALJ shall send all parties a recommended decision by certified mail, return receipt requested. The recommended decision shall contain the ALJ's findings of fact and conclusions of law on all the issues. The recommended decision shall also state that the Indian tribe or tribal organization has the right to object to the recommended decision.

(b) If the appeal involves the Department of Health and Human Services, the recommended decision shall contain the following statement:

Within 15 days of the receipt of this recommended decision, you may file an objection to the recommended decision with the Secretary of Health and Human Services under 25 CFR 900.165(b). An appeal to the Secretary under 25 CFR 900.165(b) shall be filed at the following address: Department of Health and Human Services, 200 Independence Ave. S.W., Washington, DC 20201. You shall serve copies of your notice of appeal on the official whose decision is being appealed. You shall certify to the Secretary that you have served this copy. If neither party files an objection to the recommended decision within 15 days, the recommended decision will become final.

(c) If the appeal involves the Department of the Interior, the recommended decision shall contain the following statement:

Within 15 days of the receipt of this recommended decision, you may file an objection to the recommended decision with the Interior Board of Indian Appeals (IBIA) under 25 CFR 900.165(c). An appeal to the IBIA under 25 CFR 900.165(c) shall be filed at the following address: Board of Indian Appeals, 4015 Wilson Boulevard, Arlington, VA 22203. You shall serve copies of your notice of appeal on the Secretary of the Interior, and on the official whose decision is being appealed.

You shall certify to the IBIA that you have served these copies. If neither party files an objection to the recommended decision within 15 days, the recommended decision will become final.

§ 900.173 Is the recommended decision always final?

No. Any party to the appeal may file precise and specific written objections to the recommended decision, or any other comments, within 15 days of receiving the recommended decision. You shall serve a copy of your objections on the other party. The recommended decision will become final 15 days after the Indian tribe or tribal organization receives the ALJ's recommended decision, unless a written statement of objections is filed with the Secretary of Health and Human Services or the IBIA during the 15-day period. If no party files a written statement of objections within 15 days, the recommended decision will become final.

§ 900.174 If an Indian tribe or tribal organization objects to the recommended decision, what will the Secretary of Health and Human Services or the IBIA do?

(a) The Secretary or the IBIA has 15 days from the date he/she receives timely written objections to modify, adopt, or reverse the recommended decision. If the Secretary or the IBIA does not modify or reverse the recommended decision during that time, the recommended decision automatically becomes final.

(b) When reviewing the recommended decision, the IBIA or the Secretary may consider and decide all issues properly raised by any party to the appeal, based on the record.

(c) The decision of the Secretary or of the IBIA shall:

(1) Be in writing;

(2) Specify the findings of fact or conclusions of law which are modified or reversed;

(3) Give reasons for the decision, based on the record; and

(4) State that the decision is final for the Department.

§ 900.175 Will an appeal hurt an Indian tribe or tribal organization's position in other contract negotiations?

No. A pending appeal will not affect or prevent the negotiation or award of another contract.

§ 900.176 Will the decisions on appeals be available for the public to review?

Yes. The Secretary shall publish all final decisions from the ALJs, the IBIA, and the Secretary of Health and Human Services.

Applicability of the Equal Access to Justice Act

§ 900.177 Does the Equal Access to Justice Act (EAJA) apply to appeals under this subpart?

Yes. EAJA claims against the DOI or the DHHS will be heard by the IBIA under 43 CFR 4.601–4.619. For DHHS, appeals from the EAJA award will be according to 25 CFR 900.165(b).

Subpart M—Federal Tort Claims Act Coverage General Provisions

§ 900.180 What does this subpart cover?

This subpart explains the applicability of the Federal Tort Claims Act (FTCA). This section covers:

(a) Coverage of claims arising out of the performance of medical-related functions under self-determination contracts;

(b) Coverage of claims arising out of the performance of non-medical-related functions under self-determination contracts; and

(c) Procedures for filing claims under FTCA.

§ 900.181 What definitions apply to this subpart?

Indian contractor means:

(1) In California, subcontractors of the California Rural Indian Health Board, Inc. or, subject to approval of the IHS Director after consultation with the DHHS Office of General Counsel, subcontractors of an Indian tribe or tribal organization which are:

(i) Governed by Indians eligible to receive services from the Indian Health Service;

(ii) Which carry out comprehensive IHS service programs within

geographically defined service areas; and

(iii) Which are selected and identified through tribal resolution as the local provider of Indian health care services.

(2) Subject to the approval of the IHS Director after consultation with the DHHS Office of General Counsel, Indian tribes and tribal organizations which meet in all respects the requirements of the Indian Self-Determination Act to contract directly with the Federal Government but which choose through tribal resolution to subcontract to carry out IHS service programs within geographically defined service areas with another Indian tribe or tribal organization which contracts directly with IHS.

(3) Any other contractor that qualifies as an ''Indian contractor'' under the Indian Self-Determination Act.

§ 900.182 What other statutes and regulations apply to FTCA coverage?

A number of other statutes and regulations apply to FTCA coverage, including the Federal Tort Claims Act (28 U.S.C. 1346(b), 2401, 2671–2680) and related Department of Justice regulations in 28 CFR part 14.

§ 900.183 Do Indian tribes and tribal organizations need to be aware of areas which FTCA does not cover?

Yes. There are claims against self-determination contractors which are not covered by FTCA, claims which may not be pursued under FTCA, and remedies that are excluded by FTCA. General guidance is provided below as to these matters but is not intended as a definitive description of coverage, which is subject to review by the Department of Justice and the courts on a case-by-case basis.

(a) *What claims are expressly barred by FTCA and therefore may not be made against the United States, an Indian tribe or tribal organization?* Any claim under 28 U.S.C. 2680, including claims arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights, unless otherwise authorized by 28 U.S.C. 2680(h).

(b) *What claims may not be pursued under FTCA?*

(1) Except as provided in § 900.181(a)(1) and § 900.189, claims against subcontractors arising out of the performance of subcontracts with a self-determination contractor;

(2) claims for on-the-job injuries which are covered by workmen's compensation;

(3) claims for breach of contract rather than tort claims; or

(4) claims resulting from activities performed by an employee which are outside the scope of employment.

(c) *What remedies are expressly excluded by FTCA and therefore are barred?*

(1) Punitive damages, unless otherwise authorized by 28 U.S.C. 2674; and

(2) other remedies not permitted under applicable state law.

§ 900.184 Is there a deadline for filing FTCA claims?

Yes. Claims shall be filed within 2 years of the date of accrual. (28 U.S.C. 2401).

§ 900.185 How long does the Federal government have to process an FTCA claim after the claim is received by the Federal agency, before a lawsuit may be filed?

Six months.

§ 900.186 Is it necessary for a self-determination contract to include any clauses about Federal Tort Claims Act coverage?

No, it is optional. At the request of Indian tribes and tribal organizations, self-determination contracts shall include the following clauses to clarify the scope of FTCA coverage:

(a) The following clause may be used for all contracts:

> For purposes of Federal Tort Claims Act coverage, the contractor and its employees (including individuals performing personal services contracts with the contractor to provide health care services) are deemed to be employees of the Federal government while performing work under this contract. This status is not changed by the source of the funds used by the contractor to pay the employee's salary and benefits unless the employee receives additional compensation for performing covered services from anyone other than the contractor.

(b) The following clause is for IHS contracts only:

> Under this contract, the contractor's employee may be required as a condition of employment to provide health services to non-IHS beneficiaries in order to meet contractual obligations. These services may be provided in either contractor or non-contractor facilities. The employee's status for Federal Tort Claims Act purposes is not affected.

§ 900.187 Does FTCA apply to a self-determination contract if FTCA is not referenced in the contract?

Yes.

§ 900.188 To what extent shall the contractor cooperate with the Federal government in connection with tort claims arising out of the contractor's performance?

(a) The contractor shall designate an individual to serve as tort claims liaison with the Federal government.

(b) As part of the notification required by 28 U.S.C. 2679(c), the contractor shall notify the Secretary immediately in writing of any tort claim (including any proceeding before an administrative agency or court) filed against the contractor or any of its employees that relates to performance of a self-determination contract or subcontract.

(c) The contractor, through its designated tort claims liaison, shall assist the appropriate Federal agency in preparing a comprehensive, accurate, and unbiased report of the incident so that the claim may be properly evaluated. This report should be completed within 60 days of notification of the filing of the tort claim. The report should be complete in every significant detail and include as appropriate:

(1) The date, time and exact place of the accident or incident;

(2) A concise and complete statement of the circumstances of the accident or incident;

(3) The names and addresses of tribal and/or Federal employees involved as participants or witnesses;

(4) The names and addresses of all other eyewitnesses;

(5) An accurate description of all government and other privately-owned property involved and the nature and amount of damage, if any;

(6) A statement as to whether any person involved was cited for violating a Federal, State or tribal law, ordinance, or regulation;

(7) The contractor's determination as to whether any of its employees (including Federal employees assigned to the contractor) involved in the incident giving rise to the tort claim were acting within the scope of their employment in carrying out the contract at the time the incident occurred;

(8) Copies of all relevant documentation, including available police reports, statements of witnesses, newspaper accounts, weather reports, plats and photographs of the site or damaged property, such as may be necessary or useful for purposes of claim determination by the Federal agency; and

(9) Insurance coverage information, copies of medical bills, and relevant employment records.

(d) The contractor shall cooperate with and provide assistance to the U.S. Department of Justice attorneys assigned to defend the tort claim, including, but not limited to, case preparation, discovery, and trial.

(e) If requested by the Secretary, the contractor shall make an assignment and subrogation of all the contractor's rights and claims (except those against

the Federal government) arising out of a tort claim against the contractor.

(f) If requested by the Secretary, the contractor shall authorize representatives of the Secretary to settle or defend any claim and to represent the contractor in or take charge of any action. If the Federal government undertakes the settlement or defense of any claim or action the contractor shall provide all reasonable additional assistance in reaching a settlement or asserting a defense.

§ 900.189 Does this coverage extend to subcontractors of self-determination contracts?

No. Subcontractors or subgrantees providing services to a Public Law 93–638 contractor or grantee are generally not covered. The only exceptions are Indian contractors such as those under subcontract with the California Rural Indian Health Board to carry out IHS programs in geographically defined service areas in California and personal services contracts under § 900.193 (for § 900.183(b)(1)) or § 900.183(b) (for § 900.190).

Medical-Related Claims

§ 900.190 Is FTCA the exclusive remedy for a tort claim for personal injury or death resulting from the performance of a self-determination contract?

Yes, except as explained in § 900.183(b). No claim may be filed against a self-determination contractor or employee for personal injury or death arising from the performance of medical, surgical, dental, or related functions by the contractor in carrying out self-determination contracts under the Act. Related functions include services such as those provided by nurses, laboratory and x-ray technicians, emergency medical technicians and other health care providers including psychologists and social workers. All such claims shall be filed against the United States and are subject to the limitations and restrictions of the FTCA.

§ 900.191 Are employees of self-determination contractors providing health services under the self-determination contract protected by FTCA?

Yes. For the purpose of Federal Tort Claims Act coverage, an Indian tribe or tribal organization and its employees performing medical-related functions under a self-determination contract are deemed a part of the Public Health Service if the employees are acting within the scope of their employment in carrying out the contract.

§ 900.192 What employees are covered by FTCA for medical-related claims?

(a) Permanent employees;

(b) Temporary employees;

(c) Persons providing services without compensation in carrying out a contract;

(d) Persons required because of their employment by a self-determination contractor to serve non-IHS beneficiaries (even if the services are provided in facilities not owned by the contractor); and

(e) Federal employees assigned to the contract.

§ 900.193 Does FTCA coverage extend to individuals who provide health care services under a personal services contract providing services in a facility that is owned, operated, or constructed under the jurisdiction of the IHS?

Yes. The coverage extends to individual personal services contractors providing health services in such a facility, including a facility owned by an Indian tribe or tribal organization but operated under a self-determination contract with IHS.

§ 900.194 Does FTCA coverage extend to services provided under a staff privileges agreement with a non-IHS facility where the agreement requires a health care practitioner to provide reciprocal services to the general population?

Yes. Those services are covered, as long as the contractor's health care practitioners do not receive additional compensation from a third party for the performance of these services and they are acting within the scope of their employment under a self-determination contract. Reciprocal services include:

(a) Cross-covering other medical personnel who temporarily cannot attend their patients;

(b) Assisting other personnel with surgeries or other medical procedures;

(c) Assisting with unstable patients or at deliveries; or

(d) Assisting in any patient care situation where additional assistance by health care personnel is needed.

§ 900.195 Does FTCA coverage extend to the contractor's health care practitioners providing services to private patients on a fee-for-services basis when such personnel (not the self-determination contractor) receive the fee?

No.

§ 900.196 Do covered services include the conduct of clinical studies and investigations and the provision of emergency services, including the operation of emergency motor vehicles?

Yes, if the services are provided in carrying out a self-determination contract. (An emergency motor vehicle is a vehicle, whether government, contractor, or employee-owned, used to transport passengers for medical services.)

§ 900.197 Does FTCA cover employees of the contractor who are paid by the contractor from funds other than those provided through the self-determination contract?

Yes, as long as the services out of which the claim arose were performed in carrying out the self-determination contract.

§ 900.198 Are Federal employees assigned to a self-determination contractor under the Intergovernmental Personnel Act or detailed under section 214 of the Public Health Service Act covered to the same extent that they would be if working directly for a Federal agency?

Yes.

§ 900.199 Does FTCA coverage extend to health care practitioners to whom staff privileges have been extended in contractor health care facilities operated under a self-determination contract on the condition that such practitioner provide health services to IHS beneficiaries covered by FTCA?

Yes, health care practitioners with staff privileges in a facility operated by a contractor are covered when they perform services to IHS beneficiaries. Such personnel are not covered when providing services to non-IHS beneficiaries.

§ 900.200 May persons who are not Indians or Alaska Natives assert claims under FTCA?

Yes. Non-Indian individuals served under the contract whether or not on a fee-for-service basis, may assert claims under this Subpart.

Procedure for Filing Medical-Related Claims

§ 900.201 How should claims arising out of the performance of medical-related functions be filed?

Claims should be filed on Standard Form 95 (Claim for Damage, Injury or Death) or by submitting comparable written information (including a definite amount of monetary damage claimed) with the Chief, PHS Claims Branch, Room 18–20, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, or at such other address as shall have been provided to the contractor in writing.

§ 900.202 What should a self-determination contractor or a contractor's employee do on receiving such a claim?

They should immediately forward the claim to the PHS Claims Branch at the address indicated in § 900.201 and notify the contractor's tort claims liaison.

§ 900.203 If the contractor or contractor's employee receives a summons and/or a complaint alleging a tort covered by FTCA, what should the contractor do?

As part of the notification required by 28 U.S.C. 2679(c), the contractor should immediately inform the Chief, Litigation Branch, Business and Administrative Law Division, Office of General Counsel, Department of Health and Human Services, 330 Independence Avenue SW., Room 5362, Washington, DC 20201, and the contractor's tort claims liaison, and forward the following materials:

(a) Four copies of the claimant's medical records of treatment, inpatient and outpatient, and any related correspondence, as well as reports of consultants;

(b) A narrative summary of the care and treatment involved;

(c) The names and addresses of all personnel who were involved in the care and treatment of the claimant;

(d) Any comments or opinions that the employees who treated the claimant believe to be pertinent to the allegations contained in the claim; and

(e) Other materials identified in § 900.188(c).

Non-Medical Related Claims

§ 900.204 Is FTCA the exclusive remedy for a non-medical related tort claim arising out of the performance of a self-determination contract?

Yes. Except as explained in § 900.183(b), no claim may be filed against a self-determination contractor or employee based upon performance of non-medical-related functions under a self-determination contract. Claims of this type must be filed against the United States under FTCA.

§ 900.205 To what non-medical-related claims against self-determination contractors does FTCA apply?

It applies to:

(a) All tort claims arising from the performance of self-determination contracts under the authority of the Act on or after October 1, 1989; and

(b) Any tort claims first filed on or after October 24, 1989, regardless of when the incident which is the basis of the claim occurred.

§ 900.206 What employees are covered by FTCA for non-medical-related claims?

(a) Permanent employees;

(b) Temporary employees;

(c) Persons providing services without compensation in carrying out a contract;

(d) Persons required because of their employment by a self-determination contractor to serve non-IHS beneficiaries (even if the services are provided in facilities not owned by the contractor); and

(e) Federal employees assigned to the contract.

§ 900.207 How are non-medical related tort claims and lawsuits filed for IHS?

Non-medical-related tort claims and lawsuits arising out of the performance of self-determination contracts with the Indian Health Service should be filed in the manner described in § 900.201 (for both § 900.207 and § 900.208).

§ 900.208 How are non-medical related tort claims and lawsuits filed for DOI?

Non-medical-related claims arising out of the performance of self-determination contracts with the Secretary of the Interior should be filed in the manner described in § 900.201 with the Assistant Solicitor, Procurement and Patents, Office of the Solicitor, Department of the Interior, Room 6511, 1849 C Street NW., Washington, DC 20240.

§ 900.209 What should a self-determination contractor or contractor's employee do on receiving a non-medical related tort claim?

(a) If the contract is with DHHS, they should immediately forward the claim to the PHS Claims Branch at the address indicated in § 900.201 and notify the contractor's tort claims liaison.

(b) If the contract is with DOI, they should immediately notify the Assistant Solicitor, Procurement and Patents, Office of the Solicitor, Department of the Interior, Room 6511, 1849 C Street N.W., Washington, DC 20240.

§ 900.210 If the contractor or contractor's employee receives a summons and/or complaint alleging a non-medical related tort covered by FTCA, what should an Indian tribe or tribal organization do?

(a) If the contract is with the DHHS, they should immediately inform the Chief, Litigation Branch, Business and Administrative Law Division, Office of General Counsel, Department of Health and Human Services, 330 Independence Avenue S.W., Room 5362, Washington, DC 20201 and the contractor's tort claims liaison.

(b) If the contract is with the Department of the Interior, they should immediately notify the Assistant Solicitor, Procurement and Patents, Office of the Solicitor, Department of the Interior, Room 6511, 1849 C Street N.W., Washington, DC 20240, and the contractor's tort claims liaison.

Subpart N—Post-Award Contract Disputes

§ 900.215 What does this subpart cover?

(a) This subpart covers:

(1) All HHS and DOI self-determination contracts, including construction contracts; and

(2) All disputes regarding an awarding official's decision relating to a self-determination contract.

(b) This subpart does not cover the decisions of an awarding official that are covered under subpart L.

§ 900.216 What other statutes and regulations apply to contract disputes?

(a) The Contract Disputes Act of 1978 (CDA), Public Law 95–563 (41 U.S.C. 601 as amended);

(b) If the matter is submitted to the Interior Board of Contract Appeals, 43 CFR 4.110–126; and

(c) The Equal Access to Justice Act, 5 U.S.C. 504 and 28 U.S.C. 2412 and regulations at 43 CFR 4.601 through 4.619 (DOI) and 45 CFR 13 (DHHS).

§ 900.217 Is filing a claim under the CDA our only option for resolving post-award contract disputes?

No. The Federal government attempts to resolve all contract disputes by agreement at the awarding official's level. These are alternatives to filing a claim under the CDA:

(a) Before issuing a decision on a claim, the awarding official should consider using informal discussions between the parties, assisted by individuals who have not substantially participated in the matter, to aid in resolving differences.

(b) In addition to filing a CDA claim, or instead of filing a CDA claim, the parties may choose to use an alternative dispute resolution mechanism, pursuant to the provisions of the Administrative Dispute Resolution Act, Public Law 101–552, as amended, 5 U.S.C. 581 et seq., or the options listed in section 108(1)(b)(12) of the Indian Self-Determination Act, as applicable.

§ 900.218 What is a claim under the CDA?

(a) A claim is a written demand by one of the contracting parties, asking for one or more of the following:

(1) Payment of a specific sum of money under the contract;

(2) Adjustment or interpretation of contract terms; or

(3) Any other claim relating to the contract.

(b) However, an undisputed voucher, invoice, or other routing request for payment is not a claim under the CDA. A voucher, invoice, or routing request for payment may be converted into a CDA claim if:

(1) It is disputed as to liability or amount; or

(2) It is not acted upon in a reasonable time and written notice of the claim is given to the awarding official by the

senior official designated in the contract.

§ 900.219 How does an Indian tribe, tribal organization, or Federal agency submit a claim?

(a) An Indian tribe or tribal organization shall submit its claim in writing to the awarding official. The awarding official shall document the contract file with evidence of the date the claim was received.

(b) A Federal agency shall submit its claim in writing to the contractor's senior official, as designated in the contract.

§ 900.220 Does it make a difference whether the claim is large or small?

Yes. The Contract Disputes Act requires that an Indian tribe or tribal organization making a claim for more than $100,000 shall certify that:

(a) The claim is made in good faith,

(b) Supporting documents or data are accurate and complete to the best of the Indian tribe or tribal organization's knowledge and belief;

(c) The amount claimed accurately reflects the amount believed to be owed by the Federal government; and

(d) The person making the certification is authorized to do so on behalf of the Indian tribe or tribal organization.

§ 900.221 What happens next?

(a) If the parties do not agree on a settlement, the awarding official will issue a written decision on the claim.

(b) The awarding official shall always give a copy of the decision to the Indian tribe or tribal organization by certified mail, return receipt requested, or by any other method which provides a receipt.

§ 900.222 What goes into a decision?

A decision shall:

(a) Describe the claim or dispute;

(b) Refer to the relevant terms of the contract;

(c) Set out the factual areas of agreement and disagreement;

(d) Set out the actual decision, based on the facts, and outline the reasoning which supports the decision; and

(e) Contain the following language:

This is a final decision. You may appeal this decision to the Interior Board of Contract Appeals (IBCA), U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203. If you decide to appeal, you shall, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the IBCA and provide a copy to the individual from whose decision the appeal is taken. The notice shall indicate that an appeal is intended, and refer to the decision and contract number. Instead of appealing to the IBCA, you may bring an action in the U.S. Court of Federal Claims or in the United States District Court within 12 months of the date you receive this notice.

§ 900.223 When does an Indian tribe or tribal organization get the decision?

(a) If the claim is for more than $100,000, the awarding official shall issue the decision within 60 days of the day he or she receives the claim. If the awarding official cannot issue a decision that quickly, he or she shall tell you when the decision will be issued.

(b) If the claim is for $100,000 or less, and you want a decision within 60 days, you shall advise the awarding official in writing that you want a decision within that period. If you advise the awarding official in writing that you do want a decision within 60 days, the awarding official shall issue the decision within 60 days of the day he or she receives your written notice.

(c) If your claim is for $100,000 or less and you do not advise the awarding official that you want a decision within 60 days, or if your claim exceeds $100,000 and the awarding official has notified you of the time within which a decision will be issued, the awarding official shall issue a decision within a reasonable time. What is ''reasonable'' depends upon the size and complexity of your claim, and upon the adequacy of the information you have given to the awarding official in support of your claim.

§ 900.224 What happens if the decision does not come within that time?

If the awarding official does not issue a decision within the time required under § 900.223, the Indian tribe or tribal organization may treat the delay as though the awarding official has denied the claim, and proceed according to § 900.222(e),

§ 900.225 Does an Indian tribe or tribal organization get paid immediately if the awarding official decides in its favor?

Yes. Once the awarding official decides that money should be paid under the contract, the amount due, minus any portion already paid, should be paid as promptly as possible, without waiting for either party to file an appeal. Any payment which is made under this subsection will not affect any other rights either party might have. In addition, it will not create a binding legal precedent as to any future payments.

§ 900.226 What rules govern appeals of cost disallowances?

In any appeal involving a disallowance of costs, the Board of Contract Appeals will give due consideration to the factual circumstances giving rise to the disallowed costs, and shall seek to determine a fair result without rigid adherence to strict accounting principles. The determination of allowability shall assure fair compensation for the work or service performed, using cost and accounting data as guides, but not rigid measures, for ascertaining fair compensation.

§ 900.227 Can the awarding official change the decision after it has been made?

(a) The decision of the awarding official is final and conclusive, and not subject to review by any forum, tribunal or government agency, unless an appeal or suit is timely commenced as authorized by the Contract Disputes Act. Once the decision has been made, the awarding official may not change it, except by agreement of the parties, or under the following limited circumstances:

(1) If evidence is discovered which could not have been discovered through due diligence before the awarding official issued the decision;

(2) If the awarding official learns that there has been fraud, misrepresentation, or other misconduct by a party;

(3) If the decision is beyond the scope of the awarding official's authority;

(4) If the claim has been satisfied, released or discharged; or

(5) For any other reason justifying relief from the decision.

(b) Nothing in this subpart shall be interpreted to discourage settlement discussions or prevent settlement of the dispute at any time.

(c) If a decision is withdrawn and a new decision is issued that is not acceptable to the contractor, the contractor may proceed with the appeal based on the new decision. If no new decision is issued, the contractor may proceed under § 900.224.

(d) If an appeal or suit is filed, the awarding official may modify or withdraw his or her final decision.

§ 900.228 Is an Indian tribe or tribal organization entitled to interest if it wins its claim?

Yes. If an Indian tribe or tribal organization wins the claim, it will be entitled to interest on the amount of the award. The interest will be calculated from the date the awarding official receives the claim until the day it is paid. The interest rate will be the rate which the Secretary of the Treasury sets for the Renegotiation Board under the Renegotiation Act of 1951, Public Law 92–41, 26 U.S.C. 1212 and 26 U.S.C. 7447.

§ 900.229 What role will the awarding official play during an appeal?

(a) The awarding official shall provide any data, documentation, information or support required by the IBCA for use in deciding a pending appeal.

(b) Within 30 days of receiving an appeal or learning that an appeal has been filed, the awarding official shall assemble a file which contains all the documents which are pertinent to the appeal, including:

(1) The decision and findings of fact from which the appeal is taken;

(2) The contract, including specifications and pertinent modifications, plans and drawings;

(3) All correspondence between the parties which relates to the appeal, including the letter or letters of claims in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of the proceedings, and affidavits or statements of any witnesses on the matter in dispute, which were made before the filing of the notice of appeal with the IBCA; and

(5) Any additional information which may be relevant.

§ 900.230 What is the effect of a pending appeal?

(a) Indian tribes and tribal organizations shall continue performance of a contract during the appeal of any claims to the same extent they would had there been no dispute.

(b) A pending dispute will not affect or bar the negotiation or award of any subsequent contract or negotiation between the parties.

Subpart O—Conflicts of Interest

§ 900.231 What is an organizational conflict of interest?

An organizational conflict of interest arises when there is a direct conflict between the financial interests of the contracting Indian tribe or tribal organization and:

(a) The financial interests of beneficial owners of Indian trust resources;

(b) The financial interests of the United States relating to trust resources, trust acquisitions, or lands conveyed or to be conveyed pursuant to the Alaska Native Claims Settlement Act 43 U.S.C. 1601 *et seq.*; or

(c) An express statutory obligation of the United States to third parties. This section only applies if the conflict was not addressed when the contract was first negotiated. This section only applies where the financial interests of the Indian tribe or tribal organization are significant enough to impair the Indian tribe or tribal organization's objectivity in carrying out the contract, or a portion of the contract.

§ 900.232 What must an Indian tribe or tribal organization do if an organizational conflict of interest arises under a contract?

This section only applies if the conflict was not addressed when the contract was first negotiated. When an Indian tribe or tribal organization becomes aware of an organizational conflict of interest, the Indian tribe or tribal organization must immediately disclose the conflict to the Secretary.

§ 900.233 When must an Indian tribe or tribal organization regulate its employees or subcontractors to avoid a personal conflict of interest?

An Indian tribe or tribal organization must maintain written standards of conduct to govern officers, employees, and agents (including subcontractors) engaged in functions related to the management of trust assets.

§ 900.234 What types of personal conflicts of interest involving tribal officers, employees or subcontractors would have to be regulated by an Indian tribe?

The Indian tribe or tribal organization would need a tribally-approved mechanism to ensure that no officer, employee, or agent (including a subcontractor) of the Indian tribe or tribal organization reviews a trust transaction in which that person has a financial or employment interest that conflicts with that of the trust beneficiary, whether the tribe or an allottee. Interests arising from membership in, or employment by, an Indian tribe or rights to share in a tribal claim need not be regulated.

§ 900.235 What personal conflicts of interest must the standards of conduct regulate?

The standards must prohibit an officer, employee, or agent (including a subcontractor) from participating in the review, analysis, or inspection of trust transactions involving an entity in which such persons have a direct financial interest or an employment relationship. It must also prohibit such officers, employees, or agents from accepting any gratuity, favor, or anything of more than nominal value, from a party (other than the Indian tribe) with an interest in the trust transactions under review. Such standards must also provide for sanctions or remedies for violation of the standards.

§ 900.236 May an Indian tribe elect to negotiate contract provisions on conflict of interest to take the place of this regulation?

Yes. An Indian tribe and the Secretary may agree to contract provisions, concerning either personal or organizational conflicts, that address the issues specific to the program and activities contracted in a manner that provides equivalent protection against conflicts of interest to these regulations. Agreed-upon contract provisions shall be followed, rather than the related provisions of this regulation. For example, the Indian tribe and the Secretary may agree that using the Indian tribe's own written code of ethics satisfies the objectives of the personal conflicts provisions of this regulation, in whole or in part.

Subpart P—Retrocession and Reassumption Procedures

§ 900.240 What does retrocession mean?

A retrocession means the return to the Secretary of a contracted program, in whole or in part, for any reason, before the expiration of the term of the contract.

§ 900.241 Who may retrocede a contract, in whole or in part?

An Indian tribe or tribal organization authorized by an Indian tribe may retrocede a contract.

§ 900.242 What is the effective date of retrocession?

The retrocession is effective on the date which is the earliest date among:

(a) One year from the date of the Indian tribe or tribal organization's request;

(b) The date the contract expires; or

(c) A mutually agreed-upon date.

§ 900.243 What effect will an Indian tribe or tribal organization's retrocession have on its rights to contract?

An Indian tribe or tribal organization's retrocession shall not negatively affect:

(a) Any other contract to which it is a party;

(b) Any other contracts it may request; and

(c) Any future request by the Indian tribe or tribal organization to contract for the same program.

§ 900.244 Will an Indian tribe or tribal organization's retrocession adversely affect funding available for the retroceded program?

No. The Secretary shall provide not less than the same level of funding that would have been available if there had been no retrocession.

§ 900.245 What obligation does the Indian tribe or tribal organization have with respect to returning property that was used in the operation of the retroceded program?

On the effective date of any retrocession, the Indian tribe or tribal organization shall, at the request of the

Secretary, deliver to the Secretary all requested property and equipment provided under the contract which have a per item current fair market value, less the cost of improvements borne by the Indian tribe or tribal organization, in excess of $5,000 at the time of the retrocession.

§ 900.246 What does reassumption mean?

Reassumption means rescission, in whole or in part, of a contract and assuming or resuming control or operation of the contracted program by the Secretary without consent of the Indian tribe or tribal organization. There are two types of reassumption: emergency and non-emergency.

§ 900.247 Under what circumstances is a reassumption considered an emergency instead of non-emergency reassumption?

(a) A reassumption is considered an emergency reassumption if an Indian tribe or tribal organization fails to fulfill the requirements of the contract and this failure poses:

(1) An immediate threat of imminent harm to the safety of any person; or

(2) Imminent substantial and irreparable harm to trust funds, trust lands, or interest in such lands.

(b) A reassumption is considered a non-emergency reassumption if there has been:

(1) A violation of the rights or endangerment of the health, safety, or welfare of any person; or

(2) Gross negligence or mismanagement in the handling or use of:

(i) Contract funds;

(ii) Trust funds;

(iii) Trust lands; or

(iv) Interests in trust lands under the contract.

§ 900.248 In a non-emergency reassumption, what is the Secretary required to do?

The Secretary must:

(a) Notify the Indian tribes or tribal organizations served by the contract and the contractor in writing by certified mail of the details of the deficiencies in contract performance;

(b) Request specified corrective action to be taken within a reasonable period of time, which in no case may be less than 45 days; and

(c) Offer and provide, if requested, the necessary technical assistance and advice to assist the contractor to overcome the deficiencies in contract performance. The Secretary may also make a grant for the purpose of obtaining such technical assistance as provided in section 103 of the Act.

§ 900.249 What happens if the contractor fails to take corrective action to remedy the contract deficiencies identified in the notice?

The Secretary shall provide a second written notice by certified mail to the Indian tribes or tribal organizations served by the contract and the contractor that the contract will be rescinded, in whole or in part.

§ 900.250 What shall the second written notice include?

The second written notice shall include:

(a) The intended effective date of the reassumption;

(b) The details and facts supporting the intended reassumption; and

(c) Instructions that explain the Indian tribe or tribal organization's right to a formal hearing within 30 days of receipt of the notice.

§ 900.251 What is the earliest date on which the contract will be rescinded in a non-emergency reassumption?

The contract will not be rescinded by the Secretary before the issuance of a final decision in any administrative hearing or appeal.

§ 900.252 In an emergency reassumption, what is the Secretary required to do?

(a) Immediately rescind, in whole or in part, the contract;

(b) Assume control or operation of all or part of the program; and

(c) Give written notice to the contractor and the Indian tribes or tribal organizations served.

§ 900.253 What shall the written notice include?

The written notice shall include the following:

(a) A detailed statement of the findings which support the Secretary's determination;

(b) A statement explaining the contractor's right to a hearing on the record under § 900.160 and § 900.161 within 10 days of the emergency reassumption or such later date as the contractor may approve;

(c) An explanation that the contractor may be reimbursed for actual and reasonable ''wind up costs'' incurred after the effective date of the rescission; and

(d) A request for the return of property, if any.

§ 900.254 May the contractor be reimbursed for actual and reasonable ''wind up costs'' incurred after the effective date of rescission?

Yes.

§ 900.255 What obligation does the Indian tribe or tribal organization have with respect to returning property that was used in the operation of the rescinded contract?

On the effective date of any rescission, the Indian tribe or tribal organization shall, at the request of the Secretary, deliver to the Secretary all property and equipment provided under the contract which has a per item current fair market value, less the cost of improvements borne by the Indian tribe or tribal organization, in excess of $5,000 at the time of the retrocession.

§ 900.256 Will a reassumption adversely affect funding available for the reassumed program?

No. The Secretary shall provide at least the same level of funding that would have been provided if there had been no reassumption.

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902; 50 CFR Part 600 et al. Magnuson Act Provisions; Consolidation and Update of Regulations; Collection-of-Information Approval; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 600, 601, 602, 603, 605, 611, 619, 620, and 621

[Docket No. 960315081–6160–02; I.D. 030596B]

RIN 0648–AI17

Magnuson Act Provisions; Consolidation and Update of Regulations; Collection-of-Information Approval

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS consolidates nine CFR parts into one part that contains general provisions under the Magnuson Fishery Conservation and Management Act (Magnuson Act) as they apply to the operation of Regional Fishery Management Councils (Councils) and the management of foreign and domestic fishing in the U.S. Exclusive Economic Zone (EEZ). The consolidated text is reorganized into a more logical and cohesive order, duplicative and outdated provisions are eliminated, and editorial changes are made for readability, clarity, and uniformity. In addition, the final rule makes several revisions to the regulations applying to the operation of the Councils to codify recent administrative and policy changes. The purpose of this final rule is to make the regulations more concise, better organized and, therefore, easier for the public to use, and to update the regulations to reflect current policies and procedures. This rule also adds a reference to approved collection-of-information requirements under the Paperwork Reduction Act (PRA) and amends references to previously approved collections of information. This final action is part of the President's Regulatory Reinvention Initiative.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Tom Meyer, 301–713–2339.

SUPPLEMENTARY INFORMATION: Pursuant to the Regulatory Reinvention Initiative of the President, this final rule removes eight 50 CFR parts (parts 601 (Regional Fishery Management Councils), 602 (Guidelines for Fishery Management Plans), 603 (Confidentiality of Statistics), 605 (Guidelines for Council Operations/Administration), 611 (Foreign Fishing), 619 (Preemption of State Authority under Section 306(b)), 620 (General Provisions for Domestic Fisheries), and 621 (Civil Procedures)), and consolidates the regulations contained therein, except for part 605, with the existing regulations in part 600. The final rule removes most of part 605 (Guidelines for Council Operations/Administration), and the material contained in that part has been placed in a Council Operations and Administration Handbook. These consolidated regulations provide the public with a single reference source for the general regulations under the Magnuson Act as they apply to the operation of Councils and the management of foreign and domestic fishing in the EEZ, which results in one set of regulations that are more concise, clearer, and easier to use than the existing regulations.

Additional background for this rule was contained in the preamble to the proposed rule (61 FR 19390, May 1, 1996).

Comments and Responses

The New England, Mid-Atlantic, Pacific and North Pacific Fishery Management Councils submitted comments on the proposed rule. These comments are summarized below with responses to them.

1. *Comment*: The four Councils objected to the proposed rule that would require state-designated members on Councils to be full-time employees of the state agency responsible for marine fishery management. One wondered whether current members who are not full-time state employees would have to resign.

Response: No change was made. Section 302(b)(1)(A) of the Magnuson Act states that voting members include the ''principal State official with marine fishery management responsibility and expertise in each constituent State, who is designated as such by the Governor of the State, so long as the official continues to hold such position.'' We believe the better interpretation of this language is that the official must be a state employee with present responsibility within the state for management of marine fisheries, rather than a retired employee or someone with only a tenuous relationship with the state government. The rationale for Section 302(b)(1)(A) is that the principal state official is expected to represent and espouse the positions of the governor and the state fishery agency. The Councils cannot function as a state/federal/public partnership if the principal state official cannot be counted on to speak officially on behalf of the state.

Section 600.205(a) requires new or revised designations to comply with this requirement, so no current member would have to resign.

2. *Comment*: The four Councils criticized the proposed rule that would require the principal state official's designee to be a subordinate of the principal state official.

Response: Section 600.205(b) is revised to eliminate the reference to a subordinate.

3. *Comment:* The New England and North Pacific Councils disagreed with the proposed rule that as little as 1 day served in a term counts toward a full term, in calculating the 3-consecutive-term limit for Council members. The New England Council proposed that service of less than 18 months should not count toward a full term. The North Pacific Council pointed out that the pending Senate bill (S. 39) to amend the Magnuson Act would insert ''full'' before ''consecutive'' in the second sentence of section 302(b)(3). This would then conflict with the restrictions envisioned in § 600.210.

Response: The current language of the Magnuson Act does not define ''term.'' Questions have arisen whether someone who served 2 years and 11 months of a 3-year term should have that term count against the 3-term limit. NMFS proposed that any length of service within a term should count, but acknowledges that the New England Council's proposal is a good compromise. Section 600.210(a) has been revised to count service of 18 months or more during a term as service for the entire term.

If the Magnuson Act is amended otherwise, NMFS will make the appropriate change in the regulation.

4. *Comment:* The Mid-Atlantic Council wanted Appendix A to Subpart B—Explanatory Materials (currently in 50 CFR part 602) to be restored in the final rule.

Response: Appendix A was eliminated; however, the guidance provided in that Appendix remains relevant. Those wishing to review the guidance may read it as previously published in the Federal Register (54 FR 30833, July 24, 1989).

5. *Comment:* The Mid-Atlantic Council thought the last sentence of current § 601.39(b), which allows state officials to be compensated if they can document that they were on leave without pay, should be included in the final rule.

Response: It will not be included. We believe state officials designated by the governor should be paid by the state,

not by the Councils. The example cited by the Mid-Atlantic Council, payment to a Council member appointed by the Secretary but employed by a state educational institute, could receive pay under § 600.245(a) if he or she did not receive compensation from the state for the period of Council service.

6. *Comment:* The New England Council questioned the procedure for filling at-large vacancies. The Magnuson Act requires that each constituent state governor submit a list of at least three qualified candidates for each vacancy. In the case when more than one at-large vacancy is available, the New England Council would like the names of all qualified candidates submitted by the governors for all of the positions to be placed in a ''pool.'' The Secretary would then be free to select appointees from this pool who are felt to represent a balanced and fair representation of the varying interests within the region.

Response: The procedure suggested by the New England Council for filling at-large vacancies is consistent with current procedures. As stated by the Council, this procedure results in a broader pool of qualified at-large candidates from which the Secretary may choose. Section 600.215(g)(3) has been revised to clarify the current procedures.

7. *Comment:* The New England Council objected to the requirement that, after a member has completed three consecutive terms, he/she will not be eligible for appointment to another term on any Council until 1 year has elapsed since the last day of that member's service. Since nominations must be made in March, this requirement effectively means that a qualified member leaving a Council in August of 1996 could not be considered for another appointment until March of 1998, for a term beginning in August of 1998, which is 2 years of elapsed time. The New England Council believes a former member should be able to be renominated in March of the year following his/her leaving a seat, for appointment the following August, where 1 full year would have elapsed since last service.

Response: Section 600.210(c) was intended to require a lapse of 1 year between completion of a third consecutive term and the beginning of a new term. It has been rewritten to clarify that intention.

Changes From the Proposed Rule

(1) Revised § 600.205(b) to eliminate the reference to subordinate.

(2) Revised § 600.10 definition of ''authorized officer'' to include ''any other statute administered by NOAA.''

(3) Added definitions to § 600.10 for ''codend,'' ''drift gillnet,'' ''gillnet,'' ''handgear,'' ''harpoon or harpoon gear,'' ''metric ton (mt),'' ''nm,'' ''total length (TL),'' and ''trawl,'' which will apply to these terms throughout Chapter VI.

(4) Revised § 600.10 definition of ''retain, retain aboard, or retain on board,'' by deleting ''retain'' and ''retain aboard.'' ''Retain'' is too general and is used in many contexts throughout the regulation, while ''retain aboard'' is inconsistent with our usage of the terms.

(5) Revised § 600.10 definition of ''round weight'' to include ''before processing or removal of any part.''

(6) Revised § 600.10 definition of ''state'' by adding ''the Northern Mariana Islands.''

(7) Removed definition for ''state employee'' from § 600.10 because the deletion of reference to ''subordinate'' in § 600.205(b) eliminates the need to retain definition.

(8) Revised sections discussed in the scientific research activity and exempted fishing final rule (61 FR 26435, May 28, 1996).

(9) Revised § 600.210(a) to count service of 18 months or more during a term as service for the entire term.

(10) Revised § 600.210(c) to clarify the current procedures for reappointment after a Council member has served three consecutive terms.

(11) Revised § 600.215(g)(3) to clarify the current procedures for filling an at-large vacancy.

(12) Deleted §§ 600.507 (f) and (g) and combined text with §§ 600.507 (h) and (i).

(13) Added ''or any other statute administered by NOAA'' to §§ 600.725 (a), (d), (f), (g), (j), and (k) after Magnuson Act.

(14) Added a general prohibition to § 600.725(p) to prohibit the violation of any other provision of this part, the Magnuson Act, or any other statute administered by NOAA.

(15) Section 3506(c)(B)(i) of the PRA requires that agencies inventory and display a current control assigned by the Director, Office of Management and Budget (OMB), for each agency information collection. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. This final rule adds OMB approval numbers for approved collections-of-information to the table in § 902.1(b) and amends references to previously approved collections of information.

Under NOAA Organization Handbook, Transmittal #34, dated May 31, 1993, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the Federal Register.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

Because this rule makes only nonsubstantive changes to existing regulations originally issued after prior notice and an opportunity for public comment, the Assistant Administrator for Fisheries, NOAA, under 5 U.S.C. 553(b)(B), for good cause finds that providing such procedures for this rulemaking is unnecessary. Because this rule is not substantive, it is not subject to a 30-day delay in effective date under 5 U.S.C. 553(d).

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule would not have a significant economic impact on a substantial number of small entities. The reasons were published in the proposed rule (61 FR 19390, May 1, 1996). As a result, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA).

Approved Collection-of-Information Requirements

The following collection-of-information requirements have already been approved by OMB for foreign fishing activities:

(a) *Approved under 0648–0089*— Foreign fishing permits, estimated at 2 hours per response.

(b) *Approved under 0648–0075*— Vessel reports (1) activity reports estimated at 0.1 hours per response, (2) weekly reports estimated at 0.5 hour per response, and (3) marine mammal report estimated at 0.2 hour per response; Observers (1) effort plan estimated at 0.5 hour per response, and (2) notification requirement to observers estimated at 0.2 hour per response; Recordkeeping (1) communications logs estimated at 0.1 hour per response, (2) transfer logs estimated at 0.2 hour per response, (3) daily fishing logs estimated at 0.4 hour per response, (4) daily consolidated fishing log estimated at 0.5 hour per

response, and (5) joint venture logs estimated at 0.5 hour per response; and gear avoidance and disposal (1) gear conflicts estimated at 0.2 hour per response, and (2) disposal estimated at 0.2 hour per response.

(c) *Approved under 0648–0306*—Vessel identification requirements estimated at 35 minutes per response.

(d) *Approved under 0648–0305*—Gear identification requirements estimated at 30 minutes per response.

Collection-of-Information Requirements Submitted for Approval

(e) *Approved under 0648–0309*—Scientific research activity and exempted fishing (1) 1 hour per response to send NMFS a copy of a scientific research plan and provide a copy of the cruise report or research publication, (2) 1 hour per response to complete an application for an exempted fishing permit or authorization for an exempted educational activity, and (3) 1 hour per response to collect information and provide a report at the conclusion of exempted fishing.

The following collection-of-information requirements have been approved by OMB:

(a) *Principal state officials and their designees*—Estimated at 15 hours per response (OMB control number 0648–0314).

(b) *Council appointments*—Estimated at 120 hours per appointment (30 appointments required)(OMB control number 0648–0314).

(c) *Application for reinstatement of State authority*— Estimated at 2 hours per response (OMB control number 0648–0314).

The estimated response times shown include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Parts 600, 602, and 620

Fisheries, Fishing.

50 CFR Part 601

Administrative practice and procedure, Fisheries, Fishing.

50 CFR Part 603

Confidential business information, Fisheries, Statistics.

50 CFR Part 605

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 619

Administrative practice and procedure, Fisheries, Fishing, Intergovernmental relations.

50 CFR Part 621

Fisheries, Fishing, Fishing vessels, Penalties.

Dated: June 14, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and, under the authority of 16 U.S.C., 1801 *et seq.*, 50 CFR chapter VI are amended as follows:

15 CFR CHAPTER IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b), the table is amended by removing in the left column under 50 CFR, the entries ''601.37'', ''611.3'', ''611.4'', ''611.5'', ''611.6'', ''611.8'', ''611.9'', ''611.12'', ''611.14'', ''611.50'', ''611.61'', ''611.70'', ''611.80'', ''611.81'', ''611.82'', ''611.90'', ''611.92'', ''611.93'', ''611.94'', and ''620.10'', and by removing in the right column the control numbers in corresponding positions; and by adding, in numerical order, the following entries to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
600.205	–0314
600.215	–0314
600.235	–0192
600.501	–0089
600.502	–0075
600.503	–0305 and –0306
600.504	–0075
600.506	–0075
600.507	–0075
600.510	–0075
600.512	–0309
600.520	–0075
600.630	–0314

* * * * *

50 CFR CHAPTER VI

3. Part 600 is revised to read as follows:

PART 600—MAGNUSON ACT PROVISIONS

Subpart A—General

Subpart B—Regional Fishery Management Councils

Subpart C—Council Membership

Subpart D—National Standards

Subpart E—Confidentiality of Statistics

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General

600.5 Purpose and scope.

(a) This part contains general provisions governing the operation of the eight Regional Fishery Management Councils established by the Magnuson Act and describes the Secretary's role and responsibilities under the Act. The Councils are institutions created by Federal law and must conform to the uniform standards established by the Secretary in this part.

(b) This part also governs all foreign fishing under the Magnuson Act, prescribes procedures for the conduct of preemption hearings under section 306(b) of the Magnuson Act, and collects the general provisions common to all domestic fisheries governed by this chapter.

§ 600.10 Definitions.

Unless defined otherwise in other parts of Chapter VI, the terms in this chapter have the following meanings:

Administrator means the Administrator of NOAA (Under Secretary of Commerce for Oceans and Atmosphere) or a designee.

Advisory group means a Scientific and Statistical Committee (SSC), Fishing Industry Advisory Committee (FIAC), or Advisory Panel (AP) established by a Council under the Magnuson Act.

Agent, for the purpose of foreign fishing (subpart F), means a person appointed and maintained within the United States who is authorized to receive and respond to any legal process issued in the United States to an owner and/or operator of a vessel operating under a permit and of any other vessel of that Nation fishing subject to the jurisdiction of the United States. Any diplomatic official accepting such an appointment as designated agent waives diplomatic or other immunity in connection with such process.

Aggregate or summary form means confidential data structured in such a way that the identity of the submitter cannot be determined either from the present release of the data or in combination with other releases.

Allocated species means any species or species group allocated to a foreign nation under § 600.517 for catching by vessels of that Nation.

Allocation means direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals.

Anadromous species means species of fish that spawn in fresh or estuarine waters of the United States and that migrate to ocean waters.

Assistant Administrator means the Assistant Administrator for Fisheries, NOAA, or a designee.

Authorized officer means:

(1) Any commissioned, warrant, or petty officer of the USCG;

(2) Any special agent or fishery enforcement officer of NMFS;

(3) Any officer designated by the head of any Federal or state agency that has entered into an agreement with the Secretary and the Commandant of the USCG to enforce the provisions of the Magnuson Act or any other statute administered by NOAA; or

(4) Any USCG personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Authorized species means any species or species group that a foreign vessel is authorized to retain in a joint venture by a permit issued under Activity Code 4 as described by § 600.501(c).

Catch, take, or *harvest* includes, but is not limited to, any activity that results in killing any fish or bringing any live fish on board a vessel.

Center means one of the five NMFS Fisheries Science Centers.

Coast Guard Commander means one of the commanding officers of the Coast Guard units specified in Table 1 of § 600.502, or a designee.

Codend means the terminal, closed end of a trawl net.

Confidential statistics are those submitted as a requirement of an FMP and that reveal the business or identity of the submitter.

Continental shelf fishery resources means the species listed under section 3(4) of the Magnuson Act.

Council means one of the eight Regional Fishery Management Councils established by the Magnuson Act.

Data, statistics, and *information* are used interchangeably. Dealer means the person who first receives fish by way of purchase, barter, or trade.

Designated representative means the person appointed by a foreign nation and maintained within the United States who is responsible for transmitting information to and submitting reports from vessels of that Nation and establishing observer transfer arrangements for vessels in both directed and joint venture activities.

Directed fishing, for the purpose of foreign fishing (subpart F), means any fishing by the vessels of a foreign nation for allocations of fish granted that Nation under § 600.517.

Director means the Director of the Office of Fisheries Conservation and Management, 1315 East-West Highway, Silver Spring, MD 20910.

Discard means to release or return fish to the sea, whether or not such fish are brought fully on board a fishing vessel.

Drift gillnet means a gillnet that is unattached to the ocean bottom, whether or not attached to a vessel.

Exclusive economic zone (EEZ) means the zone established by Presidential Proclamation 5030, 3 CFR part 22, dated March 10, 1983, and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal states to a line on which each point is 200 nautical miles (370.40 km) from the baseline from which the territorial sea of the United States is measured.

Exempted educational activity means an activity, conducted by an educational institution accredited by a recognized national or international accreditation

body, of limited scope and duration, that is otherwise prohibited by part 285 or chapter VI of this title, but that is authorized by the appropriate Director or Regional Director for educational purposes.

Exempted or experimental fishing means fishing from a vessel of the United States that involves activities otherwise prohibited by part 285 or chapter VI of this title, but that are authorized under an exempted fishing permit (EFP). These regulations refer exclusively to exempted fishing. References in part 285 of this title and elsewhere in this chapter to experimental fishing mean exempted fishing under this part.

Fish means:

(1) When used as a noun, means any finfish, mollusk, crustacean, or parts thereof, and all other forms of marine animal and plant life other than marine mammals and birds.

(2) When used as a verb, means to engage in ''fishing,'' as defined below.

Fishery means:

(1) One or more stocks of fish that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographic, scientific, technical, recreational, or economic characteristics, or method of catch; or

(2) Any fishing for such stocks.

Fishery management unit (FMU) means a fishery or that portion of a fishery identified in an FMP relevant to the FMP's management objectives. The choice of an FMU depends on the focus of the FMP's objectives, and may be organized around biological, geographic, economic, technical, social, or ecological perspectives.

Fishery resource means any fish, any stock of fish, any species of fish, and any habitat of fish.

Fishing, or *to fish* means any activity, other than scientific research conducted by a scientific research vessel, that involves:

(1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish;

(3) Any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(4) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1), (2), or (3) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft that is used for, equipped to be used for, or of a type that is normally used for:

(1) Fishing; or

(2) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Foreign fishing means fishing by a foreign fishing vessel.

Foreign fishing vessel (FFV) means any fishing vessel other than a vessel of the United States, except those foreign vessels engaged in recreational fishing, as defined in this section.

Gear conflict means any incident at sea involving one or more fishing vessels:

(1) In which one fishing vessel or its gear comes into contact with another vessel or the gear of another vessel; and

(2) That results in the loss of, or damage to, a fishing vessel, fishing gear, or catch.

Gillnet means a panel of netting, suspended vertically in the water by floats along the top and weights along the bottom, to entangle fish that attempt to pass through it.

Governing International Fishery Agreement (GIFA) means an agreement between the United States and a foreign nation or Nations under section 201(c) of the Magnuson Act.

Grants Officer means the NOAA official authorized to sign, on behalf of the Government, the cooperative agreement providing funds to support the Council's operations and functions.

Greenwich mean time (GMT) means the local mean time at Greenwich, England. All times in this part are GMT unless otherwise specified.

Handgear means handline, harpoon, or rod and reel.

Harass means to unreasonably interfere with an individual's work performance, or to engage in conduct that creates an intimidating, hostile, or offensive environment.

Harpoon or *harpoon gear* means fishing gear consisting of a pointed dart or iron attached to the end of a line several hundred feet in length, the other end of which is attached to a floatation device. Harpoon gear is attached to a pole or stick that is propelled only by hand, and not by mechanical means.

Industry means both recreational and commercial fishing, and includes the harvesting, processing, and marketing sectors.

International radio call sign (IRCS) means the unique radio identifier assigned a vessel by the appropriate authority of the flag state.

Joint venture means any operation by a foreign vessel assisting fishing by U.S. fishing vessels, including catching, scouting, processing and/or support. (A joint venture generally entails a foreign vessel processing fish received from U.S. fishing vessels and conducting associated support activities.)

Magnuson Act means the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*), also known as MFCMA.

Metric ton (mt) means 1,000 kg (2,204.6 lb).

nm means nautical mile (6,076 ft (1,852 m)).

Official number means the documentation number issued by the USCG or the certificate number issued by a state or by the USCG for an undocumented vessel.

Operator, with respect to any vessel, means the master or other individual aboard and in charge of that vessel.

Optimum yield (OY) means the amount of fish:

(1) That will provide the greatest overall benefit to the United States, with particular reference to food production and recreational opportunities; and

(2) That is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor.

Owner, with respect to any vessel, means:

(1) Any person who owns that vessel in whole or in part;

(2) Any charterer of the vessel, whether bareboat, time, or voyage;

(3) Any person who acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(4) Any agent designated as such by a person described in paragraph (1), (2), or (3) of this definition.

Plan Team means a Council working group selected from agencies, institutions, and organizations having a role in the research and/or management of fisheries, whose primary purpose is to assist the Council in the preparation and/or review of FMPs, amendments, and supporting documents for the Council, and/or SSC and AP.

Predominately means, with respect to fishing in a fishery, that more fishing on a stock or stocks of fish covered by the FMP occurs, or would occur in the absence of regulations, within or beyond the EEZ than occurs in the aggregate within the boundaries of all states off the coasts of which the fishery is conducted.

Processing, for the purpose of foreign fishing (subpart F), means any operation by an FFV to receive fish from foreign or U.S. fishing vessels and/or the preparation of fish, including, but not limited to, cleaning, cooking, canning,

smoking, salting, drying, or freezing, either on the FFV's behalf or to assist other foreign or U.S. fishing vessels.

Product recovery rate (PRR) means a ratio expressed as a percentage of the weight of processed product divided by the round weight of fish used to produce that amount of product.

Prohibited species, with respect to a foreign vessel, means any species of fish that that vessel is not specifically allocated or authorized to retain, including fish caught or received in excess of any allocation or authorization.

Recreational fishing, with respect to a foreign vessel, means any fishing from a foreign vessel not operated for profit and not operated for the purpose of scientific research. It may not involve the sale, barter, or trade of part or all of the catch (see § 600.513).

Retain on board means to fail to return fish to the sea after a reasonable opportunity to sort the catch.

Region mean one of five NMFS Regional Offices responsible for administering the management and development of marine resources in the United States in their respective geographical regions.

Regional Director (RD) means the Director of one of the five NMFS Regions described in Table 1 of § 600.502, or a designee.

Regional Program Officer means the NMFS official designated in the terms and conditions of the grant award responsible for monitoring, recommending, and reviewing any technical aspects of the application for Federal assistance and the award.

Round weight means the weight of the whole fish before processing or removal of any part.

Secretary means the Secretary of Commerce or a designee.

Science and Research Director means the Director of one of the five NMFS Fisheries Science Centers described in Table 1 of § 600.502 of this part, or a designee, also known as Center Director.

Scientific cruise means the period of time during which a scientific research vessel is operated in furtherance of a scientific research project, beginning when the vessel leaves port to undertake the project and ending when the vessel completes the project as provided for in the applicable scientific research plan.

Scientific research activity is, for the purposes of this part, an activity in furtherance of a scientific fishery investigation or study that would meet the definition of fishing under the Magnuson Act, but for the exemption applicable to scientific research activity conducted from a scientific research vessel. Scientific research activity includes, but is not limited to, sampling, collecting, observing, or surveying the fish or fishery resources within the EEZ, at sea, on board scientific research vessels, to increase scientific knowledge of the fishery resources or their environment, or to test a hypothesis as part of a planned, directed investigation or study conducted according to methodologies generally accepted as appropriate for scientific research. At-sea scientific fishery investigations address one or more issues involving taxonomy, biology, physiology, behavior, disease, aging, growth, mortality, migration, recruitment, distribution, abundance, ecology, stock structure, bycatch, and catch estimation of finfish and shellfish (invertebrate) species considered to be a component of the fishery resources within the EEZ. Scientific research activity does not include the collection and retention of fish outside the scope of the applicable research plan, or the testing of fishing gear. Data collection designed to capture and land quantities of fish or invertebrates for product development, market research, and/or public display are not scientific research activities and must be permitted under exempted fishing procedures. For foreign vessels, such data collection activities are considered scientific research if they are carried out in full cooperation with the United States.

Scientific research plan means a detailed, written formulation, prepared in advance of the research, for the accomplishment of a scientific research project. At a minimum, a sound scientific research plan should include:

(1) A description of the nature and objectives of the project, including the hypothesis or hypotheses to be tested.

(2) The experimental design of the project, including a description of the methods to be used, the type and class of any vessel(s) to be used, and a description of sampling equipment.

(3) The geographical area(s) in which the project is to be conducted.

(4) The expected date of first appearance and final departure of the research vessel(s) to be employed, and deployment and removal of equipment, as appropriate.

(5) The expected quantity and species of fish to be taken and their intended disposition, and, if significant amounts of a managed species or species otherwise restricted by size or sex are needed, an explanation of such need.

(6) The name, address, and telephone/telex/fax number of the sponsoring organization and its director.

(7) The name, address, and telephone/telex/fax number, and curriculum vitae of the person in charge of the project and, where different, the person in charge of the research project on board the vessel.

(8) The identity of any vessel(s) to be used including, but not limited to, the vessel's name, official documentation number and IRCS, home port, and name, address, and telephone number of the owner and master.

Scientific research vessel means a vessel owned or chartered by, and controlled by, a foreign government agency, U.S. Government agency (including NOAA or institutions designated as federally funded research and development centers), U.S. state or territorial agency, university (or other educational institution accredited by a recognized national or international accreditation body), international treaty organization, or scientific institution. In order for a vessel that is owned or chartered and controlled by a foreign government to meet this definition, the vessel must have scientific research as its exclusive mission during the scientific cruise in question and the vessel operations must be conducted in accordance with a scientific research plan.

Scouting means any operation by a vessel exploring (on the behalf of an FFV or U.S. fishing vessel) for the presence of fish by visual, acoustic, or other means that do not involve the catching of fish.

State means each of the several states, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Northern Mariana Islands, and any other Commonwealth, territory, or possession of the United States.

State employee means any employee of the state agency responsible for developing and monitoring the state's program for marine and/or anadromous fisheries.

Statement of Organization, Practices, and Procedures (SOPP) means a statement by each Council describing its organization, practices, and procedures as required under section 302(f)(6) of the Magnuson Act.

Stock assessment means the process of collecting and analyzing biological and statistical information to determine the changes in the abundance of fishery stocks in response to fishing, and, to the extent possible, to predict future trends of stock abundance. Stock assessments are based on resource surveys; knowledge of the habitat requirements, life history, and behavior of the species; the use of environmental indices to determine impacts on stocks; and catch statistics. Stock assessments are used as a basis to ''assess and specify the present and probable future condition of

a fishery'' (as is required by the Magnuson Act), and are summarized in the Stock Assessment and Fishery Evaluation or similar document.

Stock Assessment and Fishery Evaluation (SAFE) means a document or set of documents that provides Councils with a summary of the most recent biological condition of species in an FMU, and the social and economic condition of the recreational and commercial fishing industries and the fish processing industries. It summarizes, on a periodic basis, the best available scientific information concerning the past, present, and possible future condition of the stocks and fisheries being managed under Federal regulation.

Substantially (affects) means, for the purpose of subpart G, with respect to whether a state's action or omission will substantially affect the carrying out of an FMP for a fishery, that those effects are important or material, or considerable in degree. The effects of a state's action or omission for purposes of this definition include effects upon:

(1) The achievement of the FMP's goals or objectives for the fishery;

(2) The achievement of OY from the fishery on a continuing basis;

(3) The attainment of the national standards for fishery conservation and management (as set forth in section 301(a) of the Magnuson Act) and compliance with other applicable law; or

(4) The enforcement of regulations implementing the FMP.

Support means any operation by a vessel assisting fishing by foreign or U.S. vessels, including supplying water, fuel, provisions, fish processing equipment, or other supplies to a fishing vessel.

Total length (TL) means the straight-line distance from the tip of the snout to the tip of the tail (caudal fin) while the fish is lying on its side, normally extended.

Transship means offloading and onloading or otherwise transferring fish or fish products and/or transporting fish or products made from fish.

Trawl means a cone or funnel-shaped net that is towed through the water by one or more vessels.

U.S. observer or *observer* means any person serving in the capacity of an observer employed by NMFS, either directly or under contract, or certified as a supplementary observer by NMFS.

Vessel of the United States or U.S. vessel means:

(1) Any vessel documented under chapter 121 of title 46, United States Code;

(2) Any vessel numbered under chapter 123 of title 46, United States Code, and measuring less than 5 net tons;

(3) Any vessel numbered under chapter 123 of title 46, United States Code, and used exclusively for pleasure; or

(4) Any vessel not equipped with propulsion machinery of any kind and used exclusively for pleasure.

§ 600.15 Other acronyms.

(a) *Fishery management terms.* (1) ABC—acceptable biological catch

(2) DAH—estimated domestic annual harvest

(3) DAP—estimated domestic annual processing

(4) EIS—environmental impact statement

(5) EY—equilibrium yield

(6) FMP—fishery management plan

(7) JVP—joint venture processing

(8) MSY—maximum sustainable yield

(9) PMP—preliminary FMP

(10) TAC—total allowable catch

(11) TALFF—total allowable level of foreign fishing

(b) *Legislation.* (1) APA—Administrative Procedure Act

(2) CZMA—Coastal Zone Management Act

(3) ESA—Endangered Species Act

(4) FACA—Federal Advisory Committee Act

(5) FOIA—Freedom of Information Act

(6) FLSA—Fair Labor Standards Act

(7) MFCMA—Magnuson Fishery Conservation and Management Act

(8) MMPA—Marine Mammal Protection Act

(9) MPRSA—Marine Protection, Research, and Sanctuaries Act

(10) NEPA—National Environmental Policy Act

(11) PA—Privacy Act

(12) PRA—Paperwork Reduction Act

(13) RFA—Regulatory Flexibility Act

(c) *Federal agencies.* (1) CEQ—Council on Environmental Quality

(2) DOC—Department of Commerce

(3) DOI—Department of the Interior

(4) DOS—Department of State

(5) EPA—Environmental Protection Agency

(6) FWS—Fish and Wildlife Service

(7) GSA—General Services Administration

(8) NMFS—National Marine Fisheries Service

(9) NOAA—National Oceanic and Atmospheric Administration

(10) OMB—Office of Management and Budget

(11) OPM—Office of Personnel Management

(12) SBA—Small Business Administration

(13) USCG—United States Coast Guard

Subpart B—Regional Fishery Management Councils

§ 600.105 Intercouncil boundaries.

(a) *New England and Mid-Atlantic Councils.* The boundary begins at the intersection point of Connecticut, Rhode Island, and New York at 41°18′16.249″ N. lat. and 71°54′28.477″ W. long. and proceeds south 37°22′32.75″ East to the point of intersection with the outward boundary of the EEZ as specified in the Magnuson Act.

(b) *Mid-Atlantic and South Atlantic Councils.* The boundary begins at the seaward boundary between the States of Virginia and North Carolina (36°31′00.8″ N. lat.), and proceeds due east to the point of intersection with the outward boundary of the EEZ as specified in the Magnuson Act.

(c) *South Atlantic and Gulf of Mexico Councils.* The boundary coincides with the line of demarcation between the Atlantic Ocean and the Gulf of Mexico, which begins at the intersection of the outer boundary of the EEZ, as specified in the Magnuson Act, and 83°00′ W. long., proceeds northward along that meridian to 24°35′ N. lat., (near the Dry Tortugas Islands), thence eastward along that parallel, through Rebecca Shoal and the Quicksand Shoal, to the Marquesas Keys, and then through the Florida Keys to the mainland at the eastern end of Florida Bay, the line so running that the narrow waters within the Dry Tortugas Islands, the Marquesas Keys and the Florida Keys, and between the Florida Keys and the mainland, are within the Gulf of Mexico.

§ 600.110 Intercouncil fisheries.

If any fishery extends beyond the geographical area of authority of any one Council, the Secretary may—

(a) Designate a single Council to prepare the FMP for such fishery and any amendments to such FMP, in consultation with the other Councils concerned; or

(b) Require that the FMP and any amendments be prepared jointly by all the Councils concerned.

(1) A jointly prepared FMP or amendment must be adopted by a majority of the voting members, present and voting, of each participating Council. Different conservation and management measures may be developed for specific geographic areas, but the FMP should address the entire geographic range of the stock(s).

(2) In the case of joint FMP or amendment preparation, one Council will be designated as the

''administrative lead.'' The ''administrative lead'' Council is responsible for the preparation of the FMP or any amendments and other required documents for submission to the Secretary.

(3) None of the Councils involved in joint preparation may withdraw without Secretarial approval. If Councils cannot agree on approach or management measures within a reasonable period of time, the Secretary may designate a single Council to prepare the FMP or may issue the FMP under Secretarial authority.

§ 600.115 Statement of organization, practices, and procedures (SOPP).

(a) Councils are required to publish and make available to the public a SOPP in accordance with such uniform standards as are prescribed by the Secretary (section 302(f)(6)) of the Magnuson Act. The purpose of the SOPP is to inform the public how the Council operates within the framework of the Secretary's uniform standards.

(b) Amendments to current SOPPs must be consistent with the guidelines in this section and the terms and conditions of the cooperative agreement, the statutory requirements of the Magnuson Act and other applicable law. Upon approval of a Council's SOPP amendment by the Secretary, a Notice of Availability will be published in the Federal Register, including an address where the public may write to request copies.

(c) Councils may deviate, where lawful, from the guidelines with appropriate supporting rationale, and Secretarial approval of each amendment to a SOPP would constitute approval of any such deviations for that particular Council.

§ 600.120 Employment practices.

Council members (except for Federal Government officials) and staff are not Federal employees subject to OPM regulations. Council staffing practices are set forth in each Council's SOPP.

§ 600.125 Budgeting, funding, and accounting.

Each Council's grant activities are governed by OMB Circular A–110 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations), OMB Circular A–122 (Cost Principles for Non-Profit Organizations), 15 CFR Part 29b (Audit Requirements for Institutions of Higher Education and Other Nonprofit Organizations), and the terms and conditions of the cooperative agreement. (See 5 CFR 1310.3 for availability of OMB Circulars.)

§ 600.130 Protection of confidentiality of statistics.

Each Council must establish appropriate procedures for ensuring the confidentiality of the statistics that may be submitted to it by Federal or state authorities and may be voluntarily submitted to it by private persons, including, but not limited to (also see § 600.405):

(a) Procedures for the restriction of Council member, employee, or advisory group access and the prevention of conflicts of interest, except that such procedures must be consistent with procedures of the Secretary.

(b) In the case of statistics submitted to the Council by a state, the confidentiality laws and regulations of that state.

Subpart C—Council Membership

§ 600.205 Principal state officials and their designees.

(a) Only a full-time state employee of the state agency responsible for marine and/or anadromous fisheries shall be designated by a constituent state Governor as the principal state official for purposes of section 302(b) of the Magnuson Act. New or revised designations by state Governors of principal state officials, and new or revised designations by principal state officials of their designees(s), must be delivered in writing to the appropriate NMFS Regional Director at least 48 hours before the individual may vote on any issue before the Council. Written designation(s) must indicate the employment status of each principal state official and that of his/her designee(s), how the official or designee is employed by the state fisheries agency, where each individual is employed (business address and telephone number), and whether the official's full salary is paid by the state.

(b) A principal state official may name his/her designee(s) to act on his/her behalf at Council meetings. Individuals designated to serve as designees of a principal state official on a Council, pursuant to section 302(b)(1)(A) of the Magnuson Act, must be full time state employees involved in the development of fisheries management policies for that state.

§ 600.210 Terms of Council members.

(a) Voting members (other than principal state officials, the Regional Directors, or their designees) are appointed for a term of 3 years and, except as discussed below, may be reappointed. A voting member's Council service of 18 months or more during a term of office will be counted as service for the entire 3-year term.

(b) The anniversary date for measuring terms of membership is August 11. The Secretary may designate a term of appointment shorter than 3 years, if necessary, to provide for balanced expiration of terms of office. Members may not serve more than three consecutive terms.

(c) A member appointed after January 1, 1986, who has completed three consecutive terms will be eligible for appointment to another term one full year after completion of the third consecutive term.

§ 600.215 Appointments.

The following procedures govern the nomination and appointment of Council members.

(a) Each year, terms of approximately one-third of the appointed members of each Council expire. New members will be appointed, or seated members will be reappointed to another term, by the Secretary to fill the seats being vacated. The Secretary will select the appointees from lists of nominees submitted by March 15 of each year by the Governors of the constituent states that are eligible to nominate candidates for that vacancy. When an appointed member vacates his/her seat prior to the expiration of his/her term, the Secretary will fill the vacancy for the remainder of the term by selecting from among the nominees submitted by the responsible Governor(s).

(b) A Governor must submit the names of at least three qualified nominees for each applicable vacancy.

(c) Governors are responsible for ensuring that persons nominated for appointment meet the qualification requirements of the Magnuson Act. A Governor must provide a statement explaining how each of his or her nominees meets the qualification requirements; and must provide appropriate documentation to the Secretary that each nomination was made in consultation with commercial and recreational fishing interests of that state, and that each nominee is knowledgeable and experienced, by reason of his or her occupational or other experience, scientific expertise, or training, in one or more of the following ways related to the fishery resources of the geographical area of concern to the Council:

(1) Commercial fishing or the processing or marketing of fish, fish products, or fishing equipment;

(2) Fishing for pleasure, relaxation, or consumption, or experience in any business supporting fishing;

(3) Leadership in a state, regional, or national organization whose members participate in a fishery in the Council's area of authority;

(4) The management and conservation of natural resources, including related interactions with industry, government bodies, academic institutions, and public agencies. This includes experience serving as a member of a Council, AP, SSC, or FIAC;

(5) Representing consumers of fish or fish products through participation in local, state, or national organizations, or performing other activities specifically related to the education or protection of consumers of marine resources; and

(6) Teaching, journalism, writing, consulting, legal practice, or researching matters related to fisheries, fishery management, and marine resource conservation.

(d) To assist in identifying necessary qualifications, each nominee must furnish to the appropriate Governor's office a current resume, or equivalent, describing career history—with particular attention to experience related to the above criteria. Nominees may provide such information in any format they wish. Career and educational history information sent to the Governors should also be sent to the NMFS Office of Fisheries Conservation and Management.

(e) The Secretary will review each list submitted by a Governor to ascertain if the individuals on the list are qualified for the vacancy on the basis of the criteria prescribed in paragraph (c) of this section. If the Secretary determines that any nominee is not qualified, the Secretary will notify the appropriate Governor of that determination. The Governor shall then submit a revised list or resubmit the original list with an additional explanation of the qualifications of the nominee in question. The Secretary reserves the right to determine whether nominees are qualified.

(f) There are two categories of seats to which voting members are appointed: ''obligatory'' and ''at-large.''

(1) Each constituent state is entitled to one seat on the Council on which it is a member, except that Alaska is entitled to five seats and Washington is entitled to two seats on the North Pacific Fishery Management Council. When the term of a state's obligatory member is expiring, or that seat becomes vacant before the expiration of its term, the Governor of that state must submit the names of at least three qualified individuals to fill that seat. In order to fill a state's obligatory seat, the Secretary may select from any of the nominees for such obligatory seat and from the nominees for any at-large seat submitted by the Governor of that state. If a Governor fails to provide a list of at least three qualified nominees for a seat obligated to that Governor's state, then the state's obligatory seat will remain vacant until three qualified nominees are submitted by the Governor and acted upon by the Secretary.

(2) Prior to submitting nominees for appointment to a Council, a constituent state Governor must determine if each of his or her nominees is a resident of that constituent state. A State Governor may not nominate a non-resident of that state for appointment to a Council seat obligated to that state. If, at any time during a term, an appointee to an obligatory seat changes residency to another state that is not a constituent state of that Council, the member may no longer vote as a representative of that state and must resign from that obligated seat. For purposes of this paragraph (f)(2), a state resident is an individual who maintains his/her principal residence within that constituent state and, if applicable, pays income taxes to that state and/or to another appropriate jurisdiction within that state.

(g) When the term of an at-large member is expiring, or that seat becomes vacant before the expiration of a term, the Governors of all constituent states of that Council must each submit the names of at least three qualified individuals to fill that seat.

(1) In order to fill an at-large seat, the Secretary may select a nominee for that seat submitted by any Governor of a constituent state. When the terms of both an obligatory member and an at-large member expire concurrently, the Governor of the state holding the expiring obligatory seat may indicate that the nominees who were not selected for appointment to the obligatory seat may be considered for appointment to an at-large seat, provided that the resulting total number of nominees submitted by that Governor for the expiring at-large seat is no fewer than three.

(2) If a Governor fails to submit a list of three qualified nominees for an available at-large seat within the time allotted, then a new at-large member will be appointed from lists of qualified nominees submitted by Governors of other constituent states.

(3) If a Governor chooses to submit nominations for one or more vacant at-large seats on a Council, he or she must submit lists that contain at least three different nominees for each vacant seat. In making selections to each of the available at-large seats, the Secretary will consider all names submitted by the constituent state governors.

(4) In filling expiring at-large seats, the Secretary will consider only complete slates of nominees submitted by the Governors of the Council's constituent states. If nominations are requested to fill more than one at-large seat and a Governor elects to nominate a total of four candidates, (i.e., a slate of three candidates for one seat and one for the other(s)), the set of three candidates will be considered only for the first seat, but the two candidates who were not selected will not be considered for the other(s). In this case, the only candidates considered for the other seat(s) would be derived from the slates offered by the Governors of the other states that included three different qualified candidates (i.e., candidates who were not considered for one of the other seats).

(5) Governors may nominate residents of another constituent state of a Council for appointment to an at-large seat on that Council.

(6) The Secretary must, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries in the Council's area of authority. Further, the Secretary must take action to ensure, to the extent practicable, that those persons dependent for their livelihood upon the fisheries in the Council's area of authority are fairly represented as voting members.

§ 600.220 Oath of office.

Each member appointed to a Council must take an oath of office.

§ 600.225 Rules of conduct.

(a) Council members, as Federal office holders, and Council employees are subject to most Federal criminal statutes covering bribery, conflict-of-interest, disclosure of confidential information, and lobbying with appropriated funds.

(b) The Councils are responsible for maintaining high standards of ethical conduct among themselves, their staffs, and their advisory groups. In addition to abiding by the applicable Federal conflict of interest statutes, both members and employees of the Councils must comply with the following standards of conduct:

(1) No employee of a Council may use his or her official authority or influence derived from his or her position with the Council for the purpose of interfering with or affecting the result of an election to or a nomination for any national, state, county, or municipal elective office.

(2) No employee of a Council may be deprived of employment, position, work, compensation, or benefit provided for or made possible by the Magnuson Act on account of any political activity or lack of such activity in support of or in opposition to any candidate or any political party in any national, state, county, or municipal election, or on account of his or her political affiliation.

(3) No Council member or employee may pay, offer, promise, solicit, or receive from any person, firm, or corporation a contribution of money or anything of value in consideration of either support or the use of influence or the promise of support or influence in obtaining for any person any appointive office, place, or employment under the Council.

(4) No employee of a Council may have a direct or indirect financial interest that conflicts with the fair and impartial conduct of his or her Council duties. However, an Executive Director may retain a financial interest in harvesting, processing or marketing activities, and participate in matters of general public concern on the Council that might affect that interest, if that interest has been disclosed in a report filed under § 600.235.

(5) No Council member, employee of a Council, or member of a Council advisory group may use or allow the use, for other than official purposes, of information obtained through or in connection with his or her Council employment that has not been made available to the general public.

(6) No Council member or employee of the Council may engage in criminal, infamous, dishonest, notoriously immoral, or disgraceful conduct.

(7) No Council member or employee of the Council may use Council property on other than official business. Such property must be protected and preserved from improper or deleterious operation or use.

(8) No Council member may participate—

(i) Personally and substantially as a member through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in a particular matter primarily of individual concern, such as a contract, in which he or she has a financial interest; or

(ii) In any matter of general public concern that is likely to have a direct and predictable effect on a member's financial interest, unless that interest is in harvesting, processing, or marketing activities and has been disclosed in a report filed under § 600.235. For purposes of this section, the member's financial interest includes that of the member's spouse; minor child; partner; organization in which the member is serving as officer, director, trustee, partner or employee; or any person or organization with whom the member is negotiating or has any arrangement concerning prospective employment.

§ 600.230 Removal.

The Secretary may remove for cause any Secretarially appointed member of a Council in accordance with section 302(b)(5) of the Magnuson Act, wherein the Council concerned first recommends removal of that member by not less than two-thirds of the voting members. A recommendation of a Council to remove a member must be made in writing to the Secretary and accompanied by a statement of the reasons upon which the recommendation is based.

§ 600.235 Financial disclosure.

(a) The Magnuson Act requires the disclosure by each Council nominee, voting member appointed to the Council by the Secretary, and Executive Director, of any financial interest of the reporting individual in any harvesting, processing, or marketing activity that is being, or will be, undertaken within any fishery under the authority of the individual's Council, and of any such financial interest of the reporting individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee. The information required to be reported must be disclosed on NOAA Form 88–195, ''Statement of Financial Interests for Use by Voting Members, Nominees, and Executive Directors of Regional Fishery Management Councils'' (Financial Interest Form), or such other form as the Secretary may prescribe. The report must be filed by each nominee for Secretarial appointment with the Assistant Administrator by April 15 or, if nominated after March 15, 1 month after nomination by the Governor. A seated voting member appointed by the Secretary, or an Executive Director, must file a Financial Interest Form within 45 days of taking office; must update his or her statement within 30 days of acquiring any such financial interest, or of substantially changing a financial interest; and must update his/her statement annually and file that update by February 1 of each year with the Executive Director of the appropriate Council, and concurrently provide copies of such documents to the NMFS Regional Director for the geographic area concerned. The completed Financial Interest Forms will be kept on file, and made available for public inspection at reasonable hours at the Council offices. In addition, the statements will be made available at each public Council meeting or hearing.

(b) The provisions of 18 U.S.C. 208 do not apply to an individual who has filed a financial report under this section regarding an interest that has been reported.

(c) By February 1 of each year, Councils must forward copies of the completed disclosure from each current Council member and Executive Director to the Director, Office of Fisheries Conservation and Management, NMFS. Councils must also include any updates in disclosures, as well as revisions required for changes of interests.

(d) Councils must retain the disclosure forms for each member for at least 5 years after the expiration of that member's last term.

§ 600.240 Security assurances.

(a) DOC/OS will issue security assurances to Council nominees and members following completion of background checks. Security assurances will be valid for 5 years from the date of issuance. A security assurance will not entitle the member to access classified data. In instances in which Council members may need to discuss, at closed meetings, materials classified for national security purposes, the agency or individual (e.g., DOS, USCG) providing such classified information will be responsible for ensuring that Council members and other attendees have the appropriate security clearances.

(b) Each nominee to a Council is required to complete a Certification of Status form (''form''). All nominees must certify, pursuant to the Foreign Agents Registration Act of 1938, whether they serve as an agent of a foreign principal. Each nominee must certify, date, sign, and return the form with his or her completed nomination kit. Nominees will not be considered for appointment to a Council if they have not filed this form. Any nominee who currently is an agent of a foreign principal will not be eligible for appointment to a Council, and therefore should not be nominated by a Governor for appointment.

§ 600.245 Council member compensation.

(a) The obligatory and at-large voting members of each Council appointed under section 302(b)(1)(C) of the Magnuson Act who are not employed by the Federal Government or any state or local government (i.e., any member who does not receive compensation from any such government for the period when

performing duties as a Council member) shall receive compensation at 1.2 times the daily rate for a GS–15 (Step 1) of the General Schedule (without locality pay) when engaged in actual performance of duties as assigned by the Chair of the Council. Actual performance of duties, for the purposes of compensation, may include travel time.

(b) All voting Council members whose eligibility for compensation has been established in accordance with NOAA guidelines will be paid through the cooperative agreement as a direct line item on a contractual basis without deductions being made for Social Security or Federal and state income taxes. A report of compensation will be furnished each year by the member's Council to the proper Regional Program Officer, as required by the Internal Revenue Service. Such compensation may be paid on a full day's basis, whether in excess of 8 hours a day or less than 8 hours a day. The time is compensable where the individual member is required to expend a significant private effort that substantially disrupts the daily routine to the extent that a work day is lost to the member. ''Homework'' time in preparation for formal Council meetings is not compensable.

(c) Non-government Council members receive compensation for:

(1) Days spent in actual attendance at a meeting of the Council or jointly with another Council.

(2) Travel on the day preceding or following a scheduled meeting that precluded the member from conducting his normal business on the day in question.

(3) Meetings of standing committees of the Council if approved in advance by the Chair.

(4) Individual member meeting with scientific and technical advisors, when approved in advance by the Chair and a substantial portion of any day is spent at the meeting.

(5) Conducting or attending hearings, when authorized in advance by the Chair.

(6) Other meetings involving Council business when approved in advance by the Chair.

(d) The Executive Director of each Council must submit to the appropriate Regional Office annually a report, approved by the Council Chair, of Council member compensation authorized. This report shall identify, for each member, amount paid, dates, and location and purpose of meetings attended.

Subpart D—National Standards

§ 600.305 General.

(a) *Purpose.* (1) This subpart establishes guidelines, based on the national standards, to assist in the development and review of FMPs, amendments, and regulations prepared by the Councils and the Secretary.

(2) In developing FMPs, the Councils have the initial authority to ascertain factual circumstances, to establish management objectives, and to propose management measures that will achieve the objectives. The Secretary will determine whether the proposed management objectives and measures are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary has an obligation under section 301(b) of the Magnuson Act to inform the Councils of the Secretary's interpretation of the national standards so that they will have an understanding of the basis on which FMPs will be reviewed.

(3) The national standards are statutory principles that must be followed in any FMP. The guidelines summarize Secretarial interpretations that have been, and will be, applied under these principles. The guidelines are intended as aids to decisionmaking; FMPs formulated according to the guidelines will have a better chance for expeditious Secretarial review, approval, and implementation. FMPs that are in substantial compliance with the guidelines, the Magnuson Act, and other applicable law must be approved.

(b) *Fishery management objectives.* (1) Each FMP, whether prepared by a Council or by the Secretary, should identify what the FMP is designed to accomplish (i.e., the management objectives to be attained in regulating the fishery under consideration). In establishing objectives, Councils balance biological constraints with human needs, reconcile present and future costs and benefits, and integrate the diversity of public and private interests. If objectives are in conflict, priorities should be established among them.

(2) How objectives are defined is important to the management process. Objectives should address the problems of a particular fishery. The objectives should be clearly stated, practicably attainable, framed in terms of definable events and measurable benefits, and based upon a comprehensive rather than a fragmentary approach to the problems addressed. An FMP should make a clear distinction between objectives and the management measures chosen to achieve them. The objectives of each FMP provide the context within which the Secretary will judge the consistency of an FMP's conservation and management measures with the national standards.

(c) *Word usage.* The word usage refers to all regulations in this subpart.

(1) *Must* is used, instead of ''shall'', to denote an obligation to act; it is used primarily when referring to requirements of the Magnuson Act, the logical extension thereof, or of other applicable law.

(2) *Shall* is used only when quoting statutory language directly, to avoid confusion with the future tense.

(3) *Should* is used to indicate that an action or consideration is strongly recommended to fulfill the Secretary's interpretation of the Magnuson Act, and is a factor reviewers will look for in evaluating a SOPP or FMP.

(4) *May* is used in a permissive sense.

(5) *May not* is proscriptive; it has the same force as ''must not.''

(6) *Will* is used descriptively, as distinguished from denoting an obligation to act or the future tense.

(7) *Could* is used when giving examples, in a hypothetical, permissive sense.

(8) *Can* is used to mean ''is able to,'' as distinguished from ''may.''

(9) *Examples* are given by way of illustration and further explanation. They are not inclusive lists; they do not limit options.

(10) *Analysis,* as a paragraph heading, signals more detailed guidance as to the type of discussion and examination an FMP should contain to demonstrate compliance with the standard in question.

(11) *Determine* is used when referring to OY.

(12) *Adjust* is used when establishing a deviation from MSY for biological reasons, such as in establishing ABC, TAC, or EY.

(13) *Modify* is used when the deviation from MSY is for the purpose of determining OY, in accord with relevant economic, social, or ecological factors.

§ 600.310 National Standard 1—Optimum Yield.

(a) *Standard 1.* Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the OY from each fishery for the U.S. fishing industry.

(b) *General.* The determination of OY is a decisional mechanism for resolving the Magnuson Act's multiple purposes and policies, for implementing an FMP's objectives, and for balancing the various interests that comprise the national welfare. OY is based on MSY,

or on MSY as it may be adjusted under paragraph (d)(3) of this section. The most important limitation on the specification of OY is that the choice of OY—and the conservation and management measures proposed to achieve it—must prevent overfishing.

(c) *Overfishing.* (1) Overfishing is a level or rate of fishing mortality that jeopardizes the long-term capacity of a stock or stock complex to produce MSY on a continuing basis. Each FMP must specify, to the maximum extent possible, an objective and measurable definition of overfishing for each stock or stock complex covered by that FMP, and provide an analysis of how the definition was determined and how it relates to reproductive potential.

(2) The definition of overfishing for a stock or stock complex may be developed or expressed in terms of a minimum level of spawning biomass (''threshold''); maximum level or rate of fishing mortality; or formula, model, or other measurable standard designed to ensure the maintenance of the stock's productive capacity. Overfishing must be defined in a way to enable the Council and the Secretary to monitor and evaluate the condition of the stock or stock complex relative to the definition.

(3) Different fishing patterns can produce a variety of effects on local and areawide abundance, availability, size, and age composition of a stock. Some of these fishing patterns have been called ''growth,'' ''localized,'' or ''pulse'' overfishing; however, these patterns are not necessarily overfishing under the national standard 1 definition, which focuses on recruitment and long-term reproductive capacity. (Also see paragraph (c)(6)(v)).

(4) Overfishing definitions must be based on the best scientific information available. Councils must build into the definition appropriate consideration of risk, taking into account uncertainties in estimating domestic harvest, stock conditions, or the effects of environmental factors (also see § 600.335). In cases where scientific data are severely limited, the Councils' informed judgment must be used, and effort should be directed to identifying and gathering the needed data.

(5) Secretarial approval or disapproval of the overfishing definition will be based on consideration of whether the proposal:

(i) Has sufficient scientific merit.

(ii) Is likely to result in effective Council action to prevent the stock from closely approaching or reaching an overfished status.

(iii) Provides a basis for objective measurement of the status of the stock against the definition.

(iv) Is operationally feasible.

(6) In addition to a specific definition of overfishing for each stock or stock complex, an FMP must contain management measures necessary to prevent overfishing.

(i) If overfishing is defined in terms of a threshold biomass level, the Council must ensure that fishing effort does not cause spawning biomass to fall and remain below that threshold.

(ii) If overfishing is defined in terms of a maximum fishing mortality rate, the Council must ensure that fishing effort on that stock does not cause the maximum rate to be exceeded.

(iii) If data indicate that an overfished condition exists, a program must be established for rebuilding the stock over a period of time specified by the Council and acceptable to the Secretary.

(iv) If data indicate that a stock or stock complex is approaching an overfished condition, the Council should identify actions or combination of actions to be undertaken in response.

(v) Depending on the objectives of a particular FMP and the specific definition of overfishing established for the stock or stock complex under management, a Council may recommend measures to prevent or permit pulse, localized, or growth overfishing.

(7) Significant adverse alterations in environment/habitat conditions increase the possibility that fishing effort will contribute to a stock collapse. Care should be taken to identify the cause of any downward trends in spawning stock sizes or average annual recruitment.

(i) Whether these trends are caused by environmental changes or by fishing effort, the only direct control provided by the Magnuson Act is to reduce fishing mortality.

(ii) Unless the Council asserts, as supported by appropriate evidence, that reduced fishing effort would not alleviate the problem, the FMP must include measures to reduce fishing mortality, regardless of the cause of the low population level.

(iii) If manmade environmental changes are contributing to the downward trends, in addition to controlling effort, Councils should recommend restoration of habitat and other ameliorative programs, to the extent possible, and consider whether to take action under section 302(i) of the Magnuson Act.

(8) There are certain limited exceptions to the requirement to prevent overfishing. Harvesting the major component of a mixed fishery at its optimum level may result in the overfishing of a minor (smaller or less valuable) stock component in the fishery. A Council may decide to permit this type of overfishing if it is demonstrated by analysis (paragraph (f)(5) of this section) that it will result in net benefits to the Nation, and if the Council's action will not cause any stock to require protection under the ESA.

(9) All FMPs should contain a definition of overfishing for the stock or stock complex managed under the affected FMP.

(d) *MSY.* (1) MSY is the largest average annual catch or yield that can be taken over a significant period of time from each stock under prevailing ecological and environmental conditions.

(2) MSY may be presented as a range of values. One MSY may be specified for a related group of species in a mixed-species fishery. Since MSY is a long-term average, it need not be specified annually, but must be based on the best scientific information available.

(3) MSY may be only the starting point in providing a realistic biological description of allowable fishery removals. MSY may need to be adjusted because of environmental factors, stock peculiarities, or other biological variables, prior to the determination of OY. An example of such an adjustment is determination of ABC.

(e) *ABC.* (1) ABC is a preliminary description of the acceptable harvest (or range of harvests) for a given stock or stock complex. Its derivation focuses on the status and dynamics of the stock, environmental conditions, other ecological factors, and prevailing technological characteristics of the fishery.

(2) When ABC is used, its specification constitutes the first step in deriving OY from MSY. Unless the best scientific information available indicates otherwise (see § 600.315, ABC should be no higher than the product of the stock's natural mortality rate and the biomass of the exploitable stock. If a threshold has been specified for the stock, ABC must equal zero when the stock is at or below that threshold (also see paragraph (c)(2) of this section). ABC may be expressed in numeric or nonnumeric terms.

(f) *OY*—(1) *Definition.* The term ''optimum'' with respect to the yield from a fishery, means the amount of fish that will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and that is prescribed as such on the basis of the MSY from each fishery, as modified by

any relevant economic, social, or ecological factors (section 3(21)(b) of the Magnuson Act).

(2) *Values in determination.* In determining the greatest benefit to the Nation, two values that should be weighed are food production and recreational opportunities (section 3(21)(a) of the Magnuson Act). They should receive serious attention as measures of benefit when considering the economic, ecological, or social factors used in modifying MSY to obtain OY.

(i) *Food production* encompasses the goals of providing seafood to consumers, maintaining an economically viable fishery, and utilizing the capacity of U.S. fishery resources to meet nutritional needs.

(ii) *Recreational opportunities* includes recognition of the importance of the quality of the recreational fishing experience, and of the contribution of recreational fishing to the national, regional, and local economies and food supplies.

(3) *Factors relevant to OY.* The Magnuson Act's definition of OY identifies three categories of factors to be used in modifying MSY to arrive at OY: Economic, social, and ecological (section 3(21)(b) of the Magnuson Act). Not every factor will be relevant in every fishery. For some fisheries, insufficient information may be available with respect to some factors to provide a basis for corresponding modifications to MSY.

(i) *Economic factors.* Examples are promotion of domestic fishing, development of unutilized or underutilized fisheries, satisfaction of consumer and recreational needs, and encouragement of domestic and export markets for U.S.-harvested fish. Some other factors that may be considered are the value of fisheries, the level of capitalization, operating costs of vessels, alternate employment opportunities, and economies of coastal areas.

(ii) *Social factors.* Examples are enjoyment gained from recreational fishing, avoidance of gear conflicts and resulting disputes, preservation of a way of life for fishermen and their families, and dependence of local communities on a fishery. Among other factors that may be considered are the cultural place of subsistence fishing, obligations under Indian treaties, and worldwide nutritional needs.

(iii) *Ecological factors.* Examples are the vulnerability of incidental or unregulated species in a mixed-species fishery, predator-prey or competitive interactions, and dependence of marine mammals and birds or endangered species on a stock of fish. Equally important are environmental conditions that stress marine organisms, such as natural and manmade changes in wetlands or nursery grounds, and effects of pollutants on habitat and stocks.

(4) *Specification.* (i) The amount of fish that constitutes the OY need not be expressed in terms of numbers or weight of fish. The economic, social, or ecological modifications to MSY may be expressed by describing fish having common characteristics, the harvest of which provides the greatest overall benefit to the Nation. For instance, OY may be expressed as a formula that converts periodic stock assessments into quotas or guideline harvest levels for recreational, commercial, and other fishing. OY may be defined in terms of an annual harvest of fish or shellfish having a minimum weight, length, or other measurement. OY may also be expressed as an amount of fish taken only in certain areas, or in certain seasons, or with particular gear, or by a specified amount of fishing effort. In the case of a mixed-species fishery, the incidental-species OY may be a function of the directed catch, or absorbed into an OY for related species.

(ii) If a numerical OY is chosen, a range or average may be specified.

(iii) In a fishery where there is a significant discard component, the OY may either include or exclude discards, consistent with the other yield determinations.

(iv) The OY specification can be converted into an annual numerical estimate to establish any TALFF and to analyze impacts of the management regime. There should be a mechanism in an FMP for periodic reassessment of the OY specification, so that it is responsive to changing circumstances in the fishery.

(v) The determination of OY requires a specification of MSY. However, even where sufficient scientific data as to the biological characteristics of the stock do not exist, or the period of exploitation or investigation has not been long enough for adequate understanding of stock dynamics, or where frequent large-scale fluctuations in stock size make this concept of limited value, the OY should be based on the best scientific information available.

(5) *Analysis.* An FMP must contain an analysis of how its OY specification was determined (section 303(a)(3) of the Magnuson Act). It should relate the explanation of overfishing in paragraph (c) of this section to conditions in the particular fishery, and explain how its choice of OY and conservation and management measures will prevent overfishing in that fishery. If overfishing is permitted under paragraph (c)(8) of this section, the analysis must contain a justification in terms of overall benefits and an assessment of the risk of the species or stock component reaching a threatened or endangered status. A Council must identify those economic, social, and ecological factors relevant to management of a particular fishery, then evaluate them to arrive at the modification (if any) of MSY. The choice of a particular OY must be carefully defined and documented to show that the OY selected will produce the greatest benefit to the Nation.

(g) *OY as a target.* (1) The specification of OY in an FMP is not automatically a quota or ceiling, although quotas may be derived from the OY, where appropriate. OY is a target or goal; an FMP must contain conservation and management measures, and provisions for information collection, that are designed to achieve OY. These measures should allow for practical and effective implementation and enforcement of the management regime, so that the harvest is allowed to reach, but not to exceed OY by a substantial amount. The Secretary has an obligation to implement and enforce the FMP so that OY is achieved. If management measures prove unenforceable—or too restrictive, or not rigorous enough to realize OY—they should be modified; an alternative is to reexamine the adequacy of the OY specification.

(2) Exceeding OY does not necessarily constitute overfishing, although they might coincide. Even if no overfishing resulted, continual harvest at a level above a fixed-value OY would violate National Standard 1, because OY was exceeded (not achieved) on a continuing basis.

(3) Part of the OY may be held as a reserve to allow for uncertainties in estimates of stock size and of DAH or to solve operational problems in achieving (but not exceeding) OY. If an OY reserve is established, an adequate mechanism should be included in the FMP to permit timely release of the reserve to domestic or foreign fishermen, if necessary.

(h) *OY and foreign fishing.* Section 201(d) of the Magnuson Act provides that fishing by foreign nations is limited to that portion of the OY that will not be harvested by vessels of the United States.

(1) *DAH.* Councils must consider the capacity of, and the extent to which, U.S. vessels will harvest the OY on an annual basis. Estimating the amount that U.S. fishing vessels will actually harvest is required to determine the surplus.

(2) *DAP.* Each FMP must identify the capacity of U.S. processors. It must also identify the amount of DAP, which is the sum of two estimates:

(i) The amount of U.S. harvest that domestic processors will process. This estimate may be based on historical performance and on surveys of the expressed intention of manufacturers to process, supported by evidence of contracts, plant expansion, or other relevant information.

(ii) The amount of fish that will be harvested by domestic vessels, but not processed (e.g., marketed as fresh whole fish, used for private consumption, or used for bait).

(iii) *JVP.* When DAH exceeds DAP, the surplus is available for JVP. JVP is derived from DAH.

§ 600.315 National Standard 2—Scientific Information.

(a) *Standard 2.* Conservation and management measures shall be based upon the best scientific information available.

(b) *FMP development.* The fact that scientific information concerning a fishery is incomplete does not prevent the preparation and implementation of an FMP (see related §§ 600.320(d)(2) and 600.340(b).

(1) Scientific information includes, but is not limited to, information of a biological, ecological, economic, or social nature. Successful fishery management depends, in part, on the timely availability, quality, and quantity of scientific information, as well as on the thorough analysis of this information, and the extent to which the information is applied. If there are conflicting facts or opinions relevant to a particular point, a Council may choose among them, but should justify the choice.

(2) FMPs must take into account the best scientific information available at the time of preparation. Between the initial drafting of an FMP and its submission for final review, new information often becomes available. This new information should be incorporated into the final FMP where practicable; but it is unnecessary to start the FMP process over again, unless the information indicates that drastic changes have occurred in the fishery that might require revision of the management objectives or measures.

(c) *FMP implementation.* (1) An FMP must specify whatever information fishermen and processors will be required or requested to submit to the Secretary. Information about harvest within state boundaries, as well as in the EEZ, may be collected if it is needed for proper implementation of the FMP and cannot be obtained otherwise. The FMP should explain the practical utility of the information specified in monitoring the fishery, in facilitating inseason management decisions, and in judging the performance of the management regime; it should also consider the effort, cost, or social impact of obtaining it.

(2) An FMP should identify scientific information needed from other sources to improve understanding and management of the resource and the fishery.

(3) The information submitted by various data suppliers about the stocks(s) throughout its range or about the fishery should be comparable and compatible, to the maximum extent possible.

(d) *FMP amendment.* FMPs should be amended on a timely basis, as new information indicates the necessity for change in objectives or management measures.

(e) *SAFE Report.* (1) The SAFE report is a document or set of documents that provides Councils with a summary of the most recent biological condition of species in the FMU, and the social and economic condition of the recreational and commercial fishing interests and the fish processing industries. It summarizes, on a periodic basis, the best available scientific information concerning the past, present, and possible future condition of the stocks and fisheries being managed under Federal regulation.

(i) The Secretary has the responsibility to assure that a SAFE report or similar document is prepared, reviewed annually, and changed as necessary for each FMP. The Secretary or Councils may utilize any combination of talent from Council, state, Federal, university, or other sources to acquire and analyze data and produce the SAFE report.

(ii) The SAFE report provides information to the Councils for determining annual harvest levels from each stock, documenting significant trends or changes in the resource and fishery over time, and assessing the relative success of existing state and Federal fishery management programs. In addition, the SAFE report may be used to update or expand previous environmental and regulatory impact documents, and ecosystem and habitat descriptions.

(iii) Each SAFE report must be scientifically based, and cite data sources and interpretations.

(2) Each SAFE report should contain information on which to base harvest specifications.

(3) Each SAFE report should contain information on which to assess the social and economic condition of the persons and businesses that rely on the use of fish resources, including fish processing industries.

(4) Each SAFE report may contain additional economic, social, and ecological information pertinent to the success of management or the achievement of objectives of each FMP.

§ 600.320 National Standard 3—Management Units.

(a) *Standard 3.* To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(b) *General.* The purpose of this standard is to induce a comprehensive approach to fishery management. The geographic scope of the fishery, for planning purposes, should cover the entire range of the stocks(s) of fish, and not be overly constrained by political boundaries. Wherever practicable, an FMP should seek to manage interrelated stocks of fish.

(c) *Unity of management.* Cooperation and understanding among entities concerned with the fishery (e.g., Councils, states, Federal Government, international commissions, foreign nations) are vital to effective management. Where management of a fishery involves multiple jurisdictions, coordination among the several entities should be sought in the development of an FMP. Where a range overlaps Council areas, one FMP to cover the entire range is preferred. The Secretary designates which Council(s) will prepare the FMP, under section 304(f) of the Magnuson Act.

(d) *Management unit.* The term ''management unit'' means a fishery or that portion of a fishery identified in an FMP as relevant to the FMP's management objectives.

(1) *Basis.* The choice of a management unit depends on the focus of the FMP's objectives, and may be organized around biological, geographic, economic, technical, social, or ecological perspectives. For example:

(i) *Biological*—could be based on a stock(s) throughout its range.

(ii) *Geographic*—could be an area.

(iii) *Economic*—could be based on a fishery supplying specific product forms.

(iv) *Technical*—could be based on a fishery utilizing a specific gear type or similar fishing practices.

(v) *Social*—could be based on fishermen as the unifying element, such as when the fishermen pursue different

species in a regular pattern throughout the year.

(vi) *Ecological*—could be based on species that are associated in the ecosystem or are dependent on a particular habitat.

(2) *Conservation and management measures.* FMPs should include conservation and management measures for that part of the management unit within U.S. waters, although the Secretary can ordinarily implement them only within the EEZ. The measures need not be identical for each geographic area within the management unit, if the FMP justifies the differences. A management unit may contain, in addition to regulated species, stocks of fish for which there is not enough information available to specify MSY and OY or to establish management measures, so that data on these species may be collected under the FMP.

(e) *Analysis.* To document that an FMP is as comprehensive as practicable, it should include discussions of the following:

(1) The range and distribution of the stocks, as well as the patterns of fishing effort and harvest.

(2) Alternative management units and reasons for selecting a particular one. A less-than-comprehensive management unit may be justified if, for example, complementary management exits or is planned for a separate geographic area or for a distinct use of the stocks, or if the unmanaged portion of the resource is immaterial to proper management.

(3) Management activities and habitat programs of adjacent states and their effects on the FMP's objectives and management measures. Where state action is necessary to implement measures within state waters to achieve FMP objectives, the FMP should identify what state action is necessary, discuss the consequences of state inaction or contrary action, and make appropriate recommendations. The FMP should also discuss the impact that Federal regulations will have on state management activities.

(4) Management activities of other countries having an impact on the fishery, and how the FMP's management measures are designed to take into account these impacts. International boundaries may be dealt with in several ways. For example:

(i) By limiting the management unit's scope to that portion of the stock found in U.S. waters;

(ii) By estimating MSY for the entire stock and then basing the determination of OY for the U.S. fishery on the portion of the stock within U.S. waters; or

(iii) By referring to treaties or cooperative agreements.

§ 600.325 National Standard 4—Allocations.

(a) *Standard 4.* Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be:

(1) Fair and equitable to all such fishermen.

(2) Reasonably calculated to promote conservation.

(3) Carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(b) *Discrimination among residents of different states.* An FMP may not differentiate among U.S. citizens, nationals, resident aliens, or corporations on the basis of their state of residence. An FMP may not incorporate or rely on a state statute or regulation that discriminates against residents of another state. Conservation and management measures that have different effects on persons in various geographic locations are permissible if they satisfy the other guidelines under Standard 4. Examples of these precepts are:

(1) An FMP that restricted fishing in the EEZ to those holding a permit from state X would violate Standard 4 if state X issued permits only to its own citizens.

(2) An FMP that closed a spawning ground might disadvantage fishermen living in the state closest to it, because they would have to travel farther to an open area, but the closure could be justified under Standard 4 as a conservation measure with no discriminatory intent.

(c) *Allocation of fishing privileges.* An FMP may contain management measures that allocate fishing privileges if such measures are necessary or helpful in furthering legitimate objectives or in achieving the OY, and if the measures conform with paragraphs (c)(3)(i) through (c)(3)(iii) of this section.

(1) *Definition.* An ''allocation'' or ''assignment'' of fishing privileges is a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals. Any management measure (or lack of management) has incidental allocative effects, but only those measures that result in direct distributions of fishing privileges will be judged against the allocation requirements of Standard 4. Adoption of an FMP that merely perpetuates existing fishing practices may result in an allocation, if those practices directly distribute the opportunity to participate in the fishery. Allocations of fishing privileges include, for example, per-vessel catch limits, quotas by vessel class and gear type, different quotas or fishing seasons for recreational and commercial fishermen, assignment of ocean areas to different gear users, and limitation of permits to a certain number of vessels or fishermen.

(2) *Analysis of allocations.* Each FMP should contain a description and analysis of the allocations existing in the fishery and of those made in the FMP. The effects of eliminating an existing allocation system should be examined. Allocation schemes considered, but rejected by the Council, should be included in the discussion. The analysis should relate the recommended allocations to the FMP's objectives and OY specification, and discuss the factors listed in paragraph (c)(3) of this section.

(3) *Factors in making allocations.* An allocation of fishing privileges must be fair and equitable, must be reasonably calculated to promote conservation, and must avoid excessive shares. These tests are explained in paragraphs (c)(3)(i) through (c)(3)(iii) of this section:

(i) *Fairness and equity.* (A) An allocation of fishing privileges should be rationally connected to the achievement of OY or with the furtherance of a legitimate FMP objective. Inherent in an allocation is the advantaging of one group to the detriment of another. The motive for making a particular allocation should be justified in terms of the objectives of the FMP; otherwise, the disadvantaged user groups or individuals would suffer without cause. For instance, an FMP objective to preserve the economic status quo cannot be achieved by excluding a group of long-time participants in the fishery. On the other hand, there is a rational connection between an objective of harvesting shrimp at their maximum size and closing a nursery area to trawling.

(B) An allocation of fishing privileges may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups. An allocation need not preserve the status quo in the fishery to qualify as ''fair and equitable,'' if a restructuring of fishing privileges would maximize overall benefits. The Council should make an initial estimate of the relative benefits and hardships imposed by the allocation, and compare its consequences with those of alternative allocation schemes, including the status quo. Where relevant, judicial guidance and government policy concerning the rights of treaty Indians and aboriginal

Americans must be considered in determining whether an allocation is fair and equitable.

(ii) *Promotion of conservation.* Numerous methods of allocating fishing privileges are considered ''conservation and management'' measures under section 303 of the Magnuson Act. An allocation scheme may promote conservation by encouraging a rational, more easily managed use of the resource. Or, it may promote conservation (in the sense of wise use) by optimizing the yield, in terms of size, value, market mix, price, or economic or social benefit of the product.

(iii) *Avoidance of excessive shares.* An allocation scheme must be designed to deter any person or other entity from acquiring an excessive share of fishing privileges, and to avoid creating conditions fostering inordinate control, by buyers or sellers, that would not otherwise exist.

(iv) *Other factors.* In designing an allocation scheme, a Council should consider other factors relevant to the FMP's objectives. Examples are economic and social consequences of the scheme, food production, consumer interest, dependence on the fishery by present participants and coastal communities, efficiency of various types of gear used in the fishery, transferability of effort to and impact on other fisheries, opportunity for new participants to enter the fishery, and enhancement of opportunities for recreational fishing.

§ 600.330 National Standard 5—Efficiency.

(a) *Standard 5.* Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(b) *Efficiency in the utilization of resources*—(1) *General.* The term ''utilization'' encompasses harvesting, processing, and marketing, since management decisions affect all three sectors of the industry. The goal of promoting efficient utilization of fishery resources may conflict with other legitimate social or biological objectives of fishery management. In encouraging efficient utilization of fishery resources, this standard highlights one way that a fishery can contribute to the Nation's benefit with the least cost to society: Given a set of objectives for the fishery, an FMP should contain management measures that result in as efficient a fishery as is practicable or desirable.

(2) *Efficiency.* In theory, an efficient fishery would harvest the OY with the minimum use of economic inputs such as labor, capital, interest, and fuel. Efficiency in terms of aggregate costs then becomes a conservation objective, where ''conservation'' constitutes wise use of all resources involved in the fishery, not just fish stocks.

(i) In an FMP, management measures may be proposed that allocate fish among different groups of individuals or establish a system of property rights. Alternative measures examined in searching for an efficient outcome will result in different distributions of gains and burdens among identifiable user groups. An FMP should demonstrate that management measures aimed at efficiency do not simply redistribute gains and burdens without an increase in efficiency.

(ii) Management regimes that allow a fishery to operate at the lowest possible cost (e.g., fishing effort, administration, and enforcement) for a particular level of catch and initial stock size are considered efficient. Restrictive measures that unnecessarily raise any of those costs move the regime toward inefficiency. Unless the use of inefficient techniques or the creation of redundant fishing capacity contributes to the attainment of other social or biological objectives, an FMP may not contain management measures that impede the use of cost-effective techniques of harvesting, processing, or marketing, and should avoid creating strong incentives for excessive investment in private sector fishing capital and labor.

(c) *Limited access.* A ''system for limiting access,'' which is an optional measure under section 303(b) of the Magnuson Act, is a type of allocation of fishing privileges that may be used to promote economic efficiency or conservation. For example, limited access may be used to combat overfishing, overcrowding, or overcapitalization in a fishery to achieve OY. In an unutilized or underutilized fishery, it may be used to reduce the chance that these conditions will adversely affect the fishery in the future, or to provide adequate economic return to pioneers in a new fishery. In some cases, limited entry is a useful ingredient of a conservation scheme, because it facilitates application and enforcement of other management measures.

(1) *Definition.* Limited access (or limited entry) is a management technique that attempts to limit units of effort in a fishery, usually for the purpose of reducing economic waste, improving net economic return to the fishermen, or capturing economic rent for the benefit of the taxpayer or the consumer. Common forms of limited access are licensing of vessels, gear, or fishermen to reduce the number of units of effort, and dividing the total allowable catch into fishermen's quotas (a stock-certificate system). Two forms (i.e., Federal fees for licenses or permits in excess of administrative costs, and taxation) are not permitted under the Magnuson Act.

(2) *Factors to consider.* The Magnuson Act ties the use of limited access to the achievement of OY. An FMP that proposes a limited access system must consider the factors listed in section 303(b)(6) of the Magnuson Act and in § 600.325(c)(3). In addition, it should consider the criteria for qualifying for a permit, the nature of the interest created, whether to make the permit transferable, and the Magnuson Act's limitation on returning economic rent to the public under section 304(d)(1). The FMP should also discuss the costs of achieving an appropriate distribution of fishing privileges.

(d) *Analysis.* An FMP should discuss the extent to which overcapitalization, congestion, economic waste, and inefficient techniques in the fishery reduce the net benefits derived from the management unit and prevent the attainment and appropriate allocation of OY. It should also explain, in terms of the FMP's objectives, any restriction placed on the use of efficient techniques of harvesting, processing, or marketing. If, during FMP development, the Council considered imposing a limited-entry system, the FMP should analyze the Council's decision to recommend or reject limited access as a technique to achieve efficient utilization of the resources of the fishing industry.

(e) *Economic allocation.* This standard prohibits only those measures that distribute fishery resources among fishermen on the basis of economic factors alone, and that have economic allocation as their only purpose. Where conservation and management measures are recommended that would change the economic structure of the industry or the economic conditions under which the industry operates, the need for such measures must be justified in light of the biological, ecological, and social objectives of the FMP, as well as the economic objectives.

§ 600.335 National Standard 6—Variations and Contingencies.

(a) *Standard 6.* Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(b) *Conservation and management.* Each fishery exhibits unique uncertainties. The phrase ''conservation and management'' implies the wise use

of fishery resources through a management regime that includes some protection against these uncertainties. The particular regime chosen must be flexible enough to allow timely response to resource, industry, and other national and regional needs. Continual data acquisition and analysis will help the development of management measures to compensate for variations and to reduce the need for substantial buffers. Flexibility in the management regime and the regulatory process will aid in responding to contingencies.

(c) *Variations.* (1) In fishery management terms, variations arise from biological, social, and economic occurrences, as well as from fishing practices. Biological uncertainties and lack of knowledge can hamper attempts to estimate stock size and strength, stock location in time and space, environmental/habitat changes, and ecological interactions. Economic uncertainty may involve changes in foreign or domestic market conditions, changes in operating costs, drifts toward overcapitalization, and economic perturbations caused by changed fishing patterns. Changes in fishing practices, such as the introduction of new gear, rapid increases or decreases in harvest effort, new fishing strategies, and the effects of new management techniques, may also create uncertainties. Social changes could involve increases or decreases in recreational fishing, or the movement of people into or out of fishing activities due to such factors as age or educational opportunities.

(2) Every effort should be made to develop FMPs that discuss and take into account these vicissitudes. To the extent practicable, FMPs should provide a suitable buffer in favor of conservation. Allowances for uncertainties should be factored into the various elements of an FMP. Examples are:

(i) *Reduce OY.* Lack of scientific knowledge about the condition of a stock(s) could be reason to reduce OY.

(ii) *Establish a reserve.* Creation of a reserve may compensate for uncertainties in estimating domestic harvest, stock conditions, or environmental factors.

(iii) *Adjust management techniques.* In the absence of adequate data to predict the effect of a new regime, and to avoid creating unwanted variations, a Council could guard against producing drastic changes in fishing patterns, allocations, or practices.

(iv) *Highlight habitat conditions.* FMPs may address the impact of pollution and the effects of wetland and estuarine degradation on the stocks of fish; identify causes of pollution and habitat degradation and the authorities having jurisdiction to regulate or influence such activities; propose recommendations that the Secretary will convey to those authorities to alleviate such problems; and state the views of the Council on unresolved or anticipated issues.

(d) *Contingencies.* Unpredictable events—such as unexpected resource surges or failures, fishing effort greater than anticipated, disruptive gear conflicts, climatic conditions, or environmental catastrophes—are best handled by establishing a flexible management regime that contains a range of management options through which it is possible to act quickly without amending the FMP or even its regulations.

(1) The FMP should describe the management options and their consequences in the necessary detail to guide the Secretary in responding to changed circumstances, so that the Council preserves its role as policy-setter for the fishery. The description should enable the public to understand what may happen under the flexible regime, and to comment on the options.

(2) FMPs should include criteria for the selection of management measures, directions for their application, and mechanisms for timely adjustment of management measures comprising the regime. For example, an FMP could include criteria that allow the Secretary to open and close seasons, close fishing grounds, or make other adjustments in management measures.

(3) Amendment of a flexible FMP would be necessary when circumstances in the fishery change substantially, or when a Council adopts a different management philosophy and objectives.

§ 600.340 National Standard 7—Costs and Benefits.

(a) *Standard 7.* Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

(b) *Necessity of Federal management*—(1) *General.* The principle that not every fishery needs regulation is implicit in this standard. The Magnuson Act does not require Councils to prepare FMPs for each and every fishery—only for those where regulation would serve some useful purpose and where the present or future benefits of regulation would justify the costs. For example, the need to collect data about a fishery is not, by itself, adequate justification for preparation of an FMP, since there are less costly ways to gather the data (see § 600.320(d)(2). In some cases, the FMP preparation process itself, even if it does not culminate in a document approved by the Secretary, can be useful in supplying a basis for management by one or more coastal states.

(2) *Criteria.* In deciding whether a fishery needs management through regulations implementing an FMP, the following general factors should be considered, among others:

(i) The importance of the fishery to the Nation and to the regional economy.

(ii) The condition of the stock or stocks of fish and whether an FMP can improve or maintain that condition.

(iii) The extent to which the fishery could be or is already adequately managed by states, by state/Federal programs, by Federal regulations pursuant to FMPs or international commissions, or by industry self-regulation, consistent with the policies and standards of the Magnuson Act.

(iv) The need to resolve competing interests and conflicts among user groups and whether an FMP can further that resolution.

(v) The economic condition of a fishery and whether an FMP can produce more efficient utilization.

(vi) The needs of a developing fishery, and whether an FMP can foster orderly growth.

(vii) The costs associated with an FMP, balanced against the benefits (see paragraph (d) of this section as a guide).

(c) *Alternative management measures.* Management measures should not impose unnecessary burdens on the economy, on individuals, on private or public organizations, or on Federal, state, or local governments. Factors such as fuel costs, enforcement costs, or the burdens of collecting data may well suggest a preferred alternative.

(d) *Analysis.* The supporting analyses for FMPs should demonstrate that the benefits of fishery regulation are real and substantial relative to the added research, administrative, and enforcement costs, as well as costs to the industry of compliance. In determining the benefits and costs of management measures, each management strategy considered and its impacts on different user groups in the fishery should be evaluated. This requirement need not produce an elaborate, formalistic cost/benefit analysis. Rather, an evaluation of effects and costs, especially of differences among workable alternatives, including the status quo, is adequate. If quantitative estimates are not possible, qualitative estimates will suffice.

(1) *Burdens.* Management measures should be designed to give fishermen the greatest possible freedom of action in conducting business and pursuing recreational opportunities that are consistent with ensuring wise use of the

resources and reducing conflict in the fishery. The type and level of burden placed on user groups by the regulations need to be identified. Such an examination should include, for example: Capital outlays; operating and maintenance costs; reporting costs; administrative, enforcement, and information costs; and prices to consumers. Management measures may shift costs from one level of government to another, from one part of the private sector to another, or from the government to the private sector. Redistribution of costs through regulations is likely to generate controversy. A discussion of these and any other burdens placed on the public through FMP regulations should be a part of the FMP's supporting analyses.

(2) *Gains*. The relative distribution of gains may change as a result of instituting different sets of alternatives, as may the specific type of gain. The analysis of benefits should focus on the specific gains produced by each alternative set of management measures, including the status quo. The benefits to society that result from the alternative management measures should be identified, and the level of gain assessed.

Subpart E—Confidentiality of Statistics

§ 600.405 Types of statistics covered.

NOAA is authorized under the Magnuson Act and other statutes to collect proprietary or confidential commercial or financial information. This part applies to all pertinent data required to be submitted to the Secretary with respect to any FMP including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing occurred, time of fishing, number of hauls, and the estimated processing capacity of, and the actual processing capacity utilized by, U.S. fish processors.

§ 600.410 Collection and maintenance of statistics.

(a) *General*. (1) All statistics required to be submitted to the Secretary are provided to the Assistant Administrator.

(2) After receipt, the Assistant Administrator will remove all identifying particulars from the statistics if doing so is consistent with the needs of NMFS and good scientific practice.

(3) Appropriate safeguards as specified by NOAA Directives, or other NOAA or NMFS internal procedures, apply to the collection and maintenance of all statistics, whether separated from identifying particulars or not, so as to ensure their confidentiality.

(b) *Collection agreements with states*. (1) The Assistant Administrator may enter into an agreement with a state authorizing the state to collect statistics on behalf of the Secretary.

(2) NMFS will not enter into a cooperative collection agreement with a state unless the state has authority to protect the statistics from disclosure in a manner at least as protective as these regulations.

§ 600.415 Access to statistics.

(a) *General*. In determining whether to grant a request for access to confidential data, the following information will be taken into consideration (also see § 600.130):

(1) The specific types of data required.

(2) The relevance of the data to conservation and management issues.

(3) The duration of time access will be required: continuous, infrequent, or one-time.

(4) An explanation of why the availability of aggregate or non-confidential summaries of data from other sources would not satisfy the requested needs.

(b) *Federal employees*. Statistics submitted as a requirement of an FMP and that reveal the identity of the submitter will only be accessible to the following:

(1) Personnel within NMFS responsible for the collection, processing, and storage of the statistics.

(2) Federal employees who are responsible for FMP development, monitoring, and enforcement.

(3) Personnel within NMFS performing research that requires confidential statistics.

(4) Other NOAA personnel on a demonstrable need-to-know basis.

(5) NOAA/NMFS contractors or grantees who require access to confidential statistics to perform functions authorized by a Federal contract or grant.

(c) *State personnel*. Upon written request, confidential statistics will only be accessible if:

(1) State employees demonstrate a need for confidential statistics for use in fishery conservation and management.

(2) The state has entered into a written agreement between the Assistant Administrator and the head of the state's agency that manages marine and/or anadromous fisheries. The agreement shall contain a finding by the Assistant Administrator that the state has confidentiality protection authority comparable to the Magnuson Act and that the state will exercise this authority to limit subsequent access and use of the data to fishery management and monitoring purposes.

(d) *Councils*. Upon written request by the Council Executive Director, access to confidential data will be granted to:

(1) Council employees who are responsible for FMP development and monitoring.

(2) A Council for use by the Council for conservation and management purposes, with the approval of the Assistant Administrator. In addition to the information described in paragraph (a) of this section, the Assistant Administrator will consider the following in deciding whether to grant access:

(i) The possibility that Council members might gain personal or competitive advantage from access to the data.

(ii) The possibility that the suppliers of the data would be placed at a competitive disadvantage by public disclosure of the data at Council meetings or hearings.

(3) A contractor of the Council for use in such analysis or studies necessary for conservation and management purposes, with approval of the Assistant Administrator and execution of an agreement with NMFS as described by NOAA Administrative Order (NAO) 216–100.

(e) *Prohibitions*. Persons having access to these data are prohibited from unauthorized use or disclosure and are subject to the provisions of 18 U.S.C. 1905, 16 U.S.C. 1857, and NOAA/NMFS internal procedures, including NAO 216–100.

§ 600.420 Control system.

(a) The Assistant Administrator maintains a control system to protect the identity of submitters of statistics required by an FMP. The control system:

(1) Identifies those persons who have access to the statistics.

(2) Contains procedures to limit access to confidential data to authorized users.

(3) Provides for safeguarding the data.

(b) This system requires that all persons who have authorized access to the data be informed of the confidentiality of the data. These persons are required to sign a statement that they:

(1) Have been informed that the data are confidential.

(2) Have reviewed and are familiar with the procedures to protect confidential statistics.

§ 600.425 Release of statistics.

(a) The Assistant Administrator will not release to the public any statistics

required to be submitted under an FMP in a form that would identify the submitter, except as required by law.

(b) All requests from the public for statistics submitted in response to a requirement of an FMP will be processed consistent with the NOAA FOIA regulations (15 CFR part 903), NAO 205–14, Department of Commerce Administrative Orders 205–12 and 205–14 and 15 CFR part 4.

(c) NOAA does not release or allow access to confidential information in its possession to members of Council advisory groups, except as provided by law.

Subpart F—Foreign Fishing

§ 600.501 Vessel permits.

(a) *General.* (1) Each FFV fishing under the Magnuson Act must have on board a permit issued under this section, unless it is engaged only in recreational fishing.

(2) Permits issued under this section do not authorize FFV's or persons to harass, capture, or kill marine mammals. No marine mammals may be taken in the course of fishing unless that vessel has on board a currently valid Authorization Certificate under the MMPA. Regulations governing the taking of marine mammals incidental to commercial fishing operations are contained in 50 CFR part 229 of this title.

(b) *Responsibility of owners and operators.* The owners and operators of each FFV are jointly and severally responsible for compliance with the Magnuson Act, the applicable GIFA, this subpart, and any permit issued under the Magnuson Act and this subpart. The owners and operators of each FFV bear civil responsibility for the acts of their employees and agents constituting violations, regardless of whether the specific acts were authorized or even forbidden by the employer or principal, and regardless of knowledge concerning the occurrence.

(c) *Activity codes.* Permits to fish under a GIFA may be issued by the Assistant Administrator for the activities described in this paragraph, but the permits may be modified by regulations of this subpart, and by the conditions and restrictions attached to the permit (see paragraphs (e)(1)(v) and (l) of this section). The Assistant Administrator may issue a permit, as appropriate, for one or more of the activity codes listed below. The activity codes are described as follows:

(1) *Activity Code 1.* Catching, scouting, processing, transshipping, and supporting foreign vessels. Activity is limited to fish harvested or to be harvested by foreign vessels in the EEZ.

(2) *Activity Code 2.* Processing, scouting, transshipping, and supporting foreign vessels. Activity is limited to fish harvested or to be harvested by foreign vessels in the EEZ.

(3) *Activity Code 3.* Transshipping, scouting, and supporting foreign vessels. Activity is limited to fish harvested or to be harvested by foreign vessels in the EEZ.

(4) *Activity Code 4.* Processing, scouting, transshipping, and supporting U.S. vessels delivering fish to foreign vessels. Activity is limited to the receipt of unprocessed fish harvested or to be harvested by U.S. vessels.

(5) *Activity Code 5.* Transshipping, scouting, and supporting foreign vessels. Transshipment limited to fish received or to be received from foreign vessels processing fish from U.S. harvesting vessels.

(6) *Activity Code 6.* Transshipping, scouting, and supporting U.S. vessels. Transshipment limited to U.S.-harvested fish processed on board U.S. vessels.

(7) *Activity Code 7.* Processing, transshipping, and supporting foreign vessels. Activity limited to fish harvested or to be harvested by foreign vessels seaward of the EEZ.

(8) *Activity Code 8.* Transshipping and supporting foreign vessels. Activity is limited to fish harvested or to be harvested seaward of the EEZ by foreign vessels or fish duly authorized for processing in the internal waters of one of the states.

(9) *Activity Code 9.* Supporting U.S. fishing vessels and U.S. fish processing vessels and any foreign fishing vessels authorized under any activity code under paragraph (c) of this subpart.

(d) *Application.* (1) Applications for FFV permits must be submitted by each foreign nation to the DOS. Application forms are available from OES/OMC, DOS, Washington, DC. The applicant should allow 90 days for review and comment by the public, involved governmental agencies, and appropriate Councils, and for processing before the anticipated date to begin fishing. The permit application fee must be paid at the time of application according to § 600.518.

(2) Applicants must provide complete and accurate information requested on the permit application form.

(3) Applicants for FFV's that will support U.S. vessels in joint ventures (Activity Code 4) must provide the additional information specified by the permit application form.

(4) Each foreign nation may substitute one FFV for another by submitting a new vessel information form and a short explanation of the reason for the substitution to the DOS. Each substitution is considered a new application and a new application fee must be paid. NMFS will promptly process an application for a vessel replacing a permitted FFV that is disabled or decommissioned, once the DOS has notified the appropriate Council(s) of the substituted application.

(e) *Issuance.* (1) Permits may be issued to an FFV by the Assistant Administrator through the DOS after—

(i) The Assistant Administrator determines that the fishing described in the application will meet the requirements of the Magnuson Act and approves the permit application.

(ii) The foreign nation has paid the fees, including any surcharge fees and provided any assurances required by the Secretary in accordance with the provisions of § 600.518.

(iii) The foreign nation has appointed an agent.

(iv) The foreign nation has identified a designated representative.

(v) The general ''conditions and restrictions'' of receiving permits, as required by section 204(b)(7) of the Magnuson Act, and any ''additional restrictions'' attached to the permit for the conservation and management of fishery resources or to prevent significant impairment of the national defense or security interests, have been accepted by the nation issuing the FFV's documents.

(2) NMFS will distribute blank permit forms to the designated representative while the application is being processed. The designated representative must ensure that each FFV receives a permit form and must accurately transmit the permit form and the contents of the permit to the FFV when it is issued. NMFS may authorize the modification and use of the previous year's permit forms to be used on an interim basis in place of the current year's permit forms if the current forms were not made available to the designated representatives for timely distribution. The FFV owner or operator must accurately complete the permit form prior to fishing in the EEZ.

(3) A completed permit form must contain—

(i) The name and IRCS of the FFV and its permit number.

(ii) The permitted fisheries and activity codes.

(iii) The date of issuance and expiration date, if other than December 31.

(iv) All conditions and restrictions, and any additional restrictions and

technical modifications appended to the permit.

(4) Permits are not issued for boats that are launched from larger vessels. Any enforcement action that results from the activities of a launched boat will be taken against the permitted vessel.

(f) *Duration.* A permit is valid from its date of issuance to its date of expiration, unless it is revoked or suspended or the nation issuing the FFV's documents does not accept amendments to the permit made by the Assistant Administrator in accordance with the procedures of paragraph (l) of this section. The permit will be valid for no longer than the calendar year in which it was issued.

(g) *Transfer.* Permits are not transferable or assignable. A permit is valid only for the FFV to which it is issued.

(h) *Display.* Each FFV operator must have a properly completed permit form available on board the FFV when engaged in fishing activities and must produce it at the request of an authorized officer or observer.

(i) *Suspension and revocation.* NMFS may apply sanctions to an FFV's permit by revoking, suspending, or imposing additional permit restrictions on the permit under 15 CFR part 904, if the vessel is involved in the commission of any violation of the Magnuson Act, the GIFA, or this subpart; if an agent and a designated representative are not maintained in the United States; if a civil penalty or criminal fine imposed under the Magnuson Act has become overdue; or as otherwise specified in the Magnuson Act.

(j) *Fees.* Permit application fees are described in § 600.518.

(k) *Change in application information.* (1) The foreign nation must report, in writing, any change in the information supplied under paragraph (d) of this section to the Assistant Administrator within 15 calendar days after the date of the change. Failure to report a change in the ownership from that described in the current application within the specified time frame voids the permit, and all penalties involved will accrue to the previous owner.

(2) The Assistant Administrator may make technical modifications or changes in the permit application requested or reported by a Nation, such as a change in radio call sign, processing equipment, or tonnage, which will be effective immediately.

(3) If, in the opinion of the Assistant Administrator, a permit change requested by a Nation could significantly affect the status of any fishery resource, such request will be processed as an application for a new permit under this section.

(4) The Assistant Administrator will notify the designated representative of any revision that must be made on the permit form as the result of a permit change.

(5) The vessel owner or operator must record the modification on the permit form.

(l) *Permit amendments.* (1) The Assistant Administrator may amend a permit by adding ''additional restrictions'' for the conservation and management of fishery resources covered by the permit, or for the national defense or security if the Assistant Administrator determines that such interests would be significantly impaired without such restrictions. Compliance with the added additional restrictions is a condition of the permit. Violations of added additional restrictions will be treated as violations of this subpart.

(2) The Assistant Administrator may make proposed additional restrictions effective immediately, if necessary, to prevent substantial harm to a fishery resource of the United States, to allow for the continuation of ongoing fishing operations, or to allow for fishing to begin at the normal time for opening of the fishery.

(3) The Assistant Administrator will send proposed additional restrictions to each Nation whose vessels are affected (via the Secretary of State), to the appropriate Councils, and to the Commandant of the Coast Guard. NMFS will, at the same time, publish a document of any significant proposed additional restrictions in the Federal Register. The document will include a summary of the reasons underlying the proposal, and the reasons that any proposed additional restrictions are made effective immediately.

(4) The Nation whose vessels are involved, the owners of the affected vessels, their representatives, the agencies specified in paragraph (l)(3) of this section, and the public may submit written comments on the proposed additional restrictions within 30 days after publication in the Federal Register.

(5) The Assistant Administrator will make a final decision regarding the proposed additional restrictions as soon as practicable after the end of the comment period. The Assistant Administrator will provide the final additional restrictions to the Nation whose vessels are affected (via the Secretary of State) according to the procedures of paragraph (e) of this section. The Assistant Administrator will include with the final additional restrictions to the Nation, a response to comments submitted.

(6) Additional restrictions may be modified by following the procedures of paragraphs (l)(2) through (l)(5) of this section.

§ 600.502 Vessel reports.

(a) The operator of each FFV must report the FFV's activities within the EEZ to the USCG and NMFS as specified in this section.

(b) All reports required by this section must be in English and in the formats specified in the permit additions and restrictions. Reports must be delivered via private or commercial communications facilities, facsimile, or other electronic means acceptable to NMFS and the USCG, directly to the appropriate NMFS Region or Center and USCG commander. Weekly reports must also be delivered directly to the appropriate NMFS Region or Center (see tables 1 and 2 of this section). (The required reports may be delivered to the closest USCG communication station as indicated in table 3 of this section or other USCG communication station only if adequate private or commercial communications facilities have not been successfully contacted.) Radio reports must be made via radiotelegraphy, Telex, or facsimile where available. For the purposes of this section, a message is considered ''transmitted'' when its receipt is acknowledged by a communications facility and considered ''delivered'' upon its receipt by the offices of the appropriate USCG commander, NMFS Regional Office, or NMFS Center identified in table 2 of this section. Reports required by this section may be submitted by the vessel's designated representative; however, the operator of the FFV is responsible for the correct and timely filing of all required reports.

(c) *Activity reports.* The operator of each FFV must report the FFV's movements and activities before or upon the event, as specified in this paragraph (c). Appropriate forms, instructions, codes, and examples are contained in the conditions and restrictions of the FFV's permit. Each FFV report must contain the following information: The message identifier ''VESREP'' to indicate it is a vessel activity report, FFV name, international radio call sign IRCS, date (month and day based on GMT), time (hour and minute GMT), position (latitude and longitude to the nearest degree and minute) where required, area (by fishing area code) where required, the appropriate action code, confirmation codes where required, and the other

information specified in paragraphs (c)(1) through (c)(11) of this section.

(1) *''BEGIN''*. Each operator must specify the date, time, position, and area the FFV will actually ''BEGIN'' fishing in the EEZ and the species (by species code), product (by product code), and quantity of all fish and fish products (by product weight to the nearest hundredth of a metric ton) on board when entering the EEZ (action code ''BEGIN''). The message must be delivered at least 24 hours before the vessel begins to fish.

(2) *''DEPART''*. Each operator must specify the date, time, position, and area the FFV will ''DEPART'' the EEZ to embark or debark an observer, to visit a U.S. port, to conduct a joint venture in internal waters, or to otherwise temporarily leave an authorized fishing area, but not depart the seaward limit of the EEZ (action code ''DEPART''). The message must be transmitted before the FFV departs the present fishing area and delivered within 24 hours of its transmittal.

(3) *''RETURN''*. Each operator must specify the date, time, position, and area the FFV will ''RETURN'' to the EEZ following a temporary departure, and the species (by species code), product (by product code), and quantity of all fish and fish products (by product weight to the nearest hundredth of a metric ton) on board that were received in a joint venture in internal waters (action code ''RETURN''). The message must be transmitted before returning to the EEZ and delivered within 24 hours of its transmittal.

(4) *''SHIFT''*. Each operator must report each SHIFT in fishing area (as described for each fishery) by specifying the date, time, and position the FFV will start fishing, and the new area (action code ''SHIFT''). The message must be transmitted before leaving the original area and delivered within 24 hours of its transmittal. If a foreign vessel operates within 20 nautical miles (37.04 km) of a fishing area boundary, its operator may submit in one message the shift reports for all fishing area shifts occurring during 1 fishing day (0001–2400 GMT). This message must be transmitted prior to the last shift expected to be made in the day and delivered within 24 hours of its transmittal.

(5) *''JV OPS''*. Each operator must specify the date, time, position, and area at which the FFV will ''START'' joint venture operations (action code ''START JV OPS'') or ''END'' joint venture operations (action code ''END JV OPS''). These reports must be made in addition to other activity reports made under this section. Each message must be transmitted before the event and delivered within 24 hours of its transmittal.

(6) *''TRANSFER''*. The operator of each FFV that anticipates a transshipping operation in which the FFV will receive fish or fisheries products must specify the date, time, position and area the FFV will conduct the ''TRANSFER'' and the name and IRCS of the other FFV or U.S. vessel involved (action code ''TRANSFER''). The report must include the permit activity code under which the transfer will be made. The message must be transmitted prior to the transfer and delivered within 24 hours of its transmittal. The movement of raw fish from a permitted foreign catching vessel or, under an Activity Code 4, from a U.S. fishing vessel to the reporting processing vessel and the return of nets or codends is not considered a transfer.

(7) *''OFFLOADED''*. Each operator must specify the date, time, position, and area the FFV ''OFFLOADED'' fish or fisheries products TO another FFV or a U.S. vessel in a transfer, the other FFV's or U.S. vessel's name, IRCS, Permit Activity Code under which the transfer was made, species (by species code) and quantity of fish and fisheries products (by product code and by product weight, to the nearest hundredth of a metric ton) offloaded (action code ''OFFLOADED TO''). The message must be transmitted within 12 hours after the transfer is completed and delivered within 24 hours of its transmittal and before the FFV ceases fishing in the EEZ.

(8) *''RECEIVED''*. Each operator must specify the date, time, position and area the vessel ''RECEIVED'' fish or fisheries products FROM another FFV in a transfer, the other FFV's or U.S. vessel's name, IRCS, Permit Activity Code under which the receipt was made, species (by species code) and quantity of fish and fisheries products (by product code and by product weight, to the nearest hundredth of a metric ton) received (action code ''RECEIVED FROM''). The message must be transmitted within 12 hours after the transfer is completed and delivered within 24 hours of its transmittal and before the vessel ceases fishing in the EEZ.

(9) *''CEASE''*. Each operator must specify the date, time, position, and area the FFV will ''CEASE'' fishing in order to leave the EEZ (action code ''CEASE''). The message must be delivered at least 24 hours before the FFV's departure.

(10) *''CHANGE''*. Each operator must report any ''CHANGE'' TO the FFV's operations if the position or time of an event specified in an activity report will vary more than 5 nautical miles (9.26 km) or 4 hours from that previously reported, by sending a revised message inserting the word ''CHANGE'' in front of the previous report, repeating the name, IRCS, date, and time of the previous report, adding the word ''TO'' and the complete revised text of the new report (action code ''CHANGE TO''). Changes to reports specifying an early beginning of fishing by an FFV or other changes to reports contained in paragraphs (c)(1) through (c)(9) of this section must be transmitted and delivered as if the ''CHANGE'' report were the original message.

(11) *''CANCEL''*. Each operator wanting to ''CANCEL'' a previous report may do so by sending a revised message, and inserting the word ''CANCEL'' in front of the previous report's vessel name, IRCS, date, time and action code canceled (action code ''CANCEL''). The message must be transmitted and delivered prior to the date and time of the event in the original message.

(d) The operator of an FFV will be in violation of paragraphs (c)(1) through (c)(9) of this section if the FFV does not pass within 5 nautical miles (9.26 km) of the position given in the report within 4 hours of the time given in the report.

(e) The notices required by this section may be provided for individual or groups of FFV's (on a vessel-by-vessel basis) by authorized persons. An FFV operator may retransmit reports on the behalf of another FFV, if authorized by that FFV's operator. This does not relieve the individual vessel operator of the responsibility of filing required reports. In these cases, the message format should be modified so that each line of text under ''VESREP'' is a separate vessel report.

(f) *Weekly reports.* (1) The operator of each FFV in the EEZ must submit appropriate weekly reports through the Nation's designated representative. The report must arrive at the address and time specified in paragraph (g) of this section. The reports may be sent by facsimile or Telex, but a completed copy of the report form must be mailed or hand delivered to confirm the Telex. Appropriate forms, instructions, codes, and examples are contained in the conditions and restrictions of the FFV's permit. Designated representatives may include more than one vessel report in a facsimile or Telex message, if the information is submitted on a vessel-by-vessel basis. Requests for corrections to previous reports must be submitted through the Nation's designated representative and mailed or hand-delivered, together with a written explanation of the reasons for the errors. The appropriate Regional or Science and Research Director may accept or

reject any correction and initiate any appropriate civil penalty actions.

(2) *Weekly catch report (CATREP).* The operator of each FFV must submit a weekly catch report stating any catch (Activity Code 1) in round weight of each species or species group allocated to that Nation by area and days fished in each area for the weekly period Sunday through Saturday, GMT, as modified by the fishery in which the FFV is engaged. Foreign vessels delivering unsorted, unprocessed fish to a processing vessel are not required to submit CATREP's, if that processing vessel (Activity Code 2) submits consolidated CATREP's for all fish received during each weekly period. No report is required for FFV's that do not catch or receive foreign-caught fish during the reporting period.

(3) *Weekly receipts report (RECREP).* The operator of each FFV must submit a weekly report stating any receipts of U.S.-harvested fish in a joint venture (Activity Code 4) for the weekly period Sunday through Saturday, GMT, as modified by the fishery in which the FFV is engaged, for each fishing area, by authorized or prohibited species or species group; days fish received; round weight retained or returned to the U.S. fishing vessel; number of codends received; and number of vessels transferring codends. The report must also include the names of U.S. fishing vessels transferring codends during the week. No report is required for FFV's that do not receive any U.S.-harvested fish during the reporting period.

(4) *Marine mammal report (MAMREP).* The operator of each FFV must submit a weekly report stating any incidental catch or receipt of marine mammals (Activity Codes 1 or 2 and/or 4), the geographical position caught, the condition of the animal, number caught (if more than one of the same species and condition), and nationality of the catching vessel for the period Sunday through Saturday, GMT, as modified by the fishery in which the vessel is engaged. Foreign catching vessels delivering unsorted, unprocessed fish to processing vessel are not required to submit MAMREP's, provided that the processing or factory vessel (Activity Code 2) submits consolidated MAMREP's for all fish received during each weekly period. FFV's receiving U.S.-harvested fish in a joint venture (Activity Code 4) must submit consolidated reports for U.S. vessels operating in the joint venture. No report is required for FFV's that do not catch or receive marine mammals during the reporting period.

(g) *Submission instructions for weekly reports.* The designated representative for each FFV must submit weekly reports in the prescribed format to the appropriate Regional or Science and Research Director of NMFS by 1900 GMT on the Wednesday following the end of the reporting period. However, by agreement with the appropriate Director, the designated representative may submit weekly reports to some other facility of NMFS.

TABLE 1 TO § 600.502.—ADDRESSES

NMFS regional directors	NMFS science and research directors	U.S. Coast Guard commanders
Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn drive, Gloucester, MA 01930–2298.	Director, Northeast Fisheries Science Center, National Marine Fisheries Service, NOAA, 166 Water Street, Woods Hole, MA 02543–1097.	Commander, Atlantic Area, U.S. Coast Guard, 431 Crawford Street, Portsmouth, VA 23704.
Director, Southeast Region, National Marine Fisheries Service, NOAA, 9721 Exec. Center Drive N., St. Petersburg, FL 33702.	Director, Southeast Fisheries Science Center, National Marine Fisheries Service, NOAA, 75 Virginia Beach Drive, Miami, FL 33149–1003.	Commander, Atlantic Area, U.S. Coast Guard, Governor's Island, New York, NY 10004.
Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115.	Director, Northwest Fisheries Science Center, National Marine Fisheries Service, NOAA, 2725 Montlake Boulevard East, Seattle, WA 98112–2097.	Commander, Pacific Area, U.S. Coast Guard, Government Island, Alameda, CA 94501.
Director, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802–1668.	Director, Alaska Fisheries Science Center, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 4, Seattle, WA 98115–0070.	Commander, Seventeenth Coast Guard District, P.O. Box 25517, Juneau, AK 99802.
Director, Southwest Region National Marine Fisheries Service, NOAA, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802–4213.	Director, Southwest Fisheries Science Center, National Marine Fisheries Service, NOAA, P.O. Box 271, La Jolla, CA 92038–0271.	Commander, Fourteenth Coast Guard District, 300 Ala Moana Blvd., Honolulu, HI 96850.

TABLE 2 TO § 600.502.—AREAS OF RESPONSIBILITY OF NMFS AND U.S. COAST GUARD OFFICES

Area of responsibility/fishery	National Marine Fisheries Service	U.S. Coast Guard
Atlantic Ocean North of Cape Hatteras	Director, Northeast Center, Attn: Observer Program.	Commander, Atlantic Area.
Atlantic Ocean South of Cape Hatteras	Director, Northeast Center, Attn: Observer Program.	Commander, Atlantic Area.
Atlantic Tunas, Swordfish, Billfish and Sharks	Director, Office of Fisheries Conservation and Management.	Commander, Atlantic Area.
Gulf of Mexico and Caribbean Sea	Director, Southeast Region	Commander, Atlantic Area.
Pacific Ocean off the States of California, Oregon, and Washington.	Director, Northwest Region	Commander, Pacific Area.
North Pacific Ocean and Bering Sea off Alaska	Director, Alaska Region	Commander, Seventeenth Coast Guard District.

TABLE 2 TO § 600.502.—AREAS OF RESPONSIBILITY OF NMFS AND U.S. COAST GUARD OFFICES—Continued

Area of responsibility/fishery	National Marine Fisheries Service	U.S. Coast Guard
Pacific Ocean off Hawaii and Other U.S. Insular Possessions in the Central and Western Pacific.	Director, Southwest Region	Commander, Fourteenth Coast Guard District.

TABLE 3 TO § 600.502.—U.S. COAST GUARD COMMUNICATIONS STATIONS AND FREQUENCIES

U.S. Coast Guard communications station	Radiotelephone		
	IRCS	Channel [1]	GMT time
Boston	NMF	A–E	2330–1100.
		B,C	All.
		D	1100–2330.
		E	(On request).
CAMSLANT Chesapeake (Portsmouth, VA)	NMN	A	2330–1100.
		B,C	All.
		D	1100–2330.
		E	(On request).
New Orleans	NMG	A	2330–1100.
		B,C	All.
		D	1100–2330.
		E	(On request).
CAMSPAC Point Reyes (San Francisco, CA)	NMC	A–D	All.
		E	(On request).
Honolulu	NMO	A–D	All.
		E	(On request).
Kodiak	NOJ	A–D	All.
		E	(On request). .

[1] Carrier frequencies of duplex, high-frequency single-sideband channels are:

Letter	Shore transmit	Ship transmit
A	4426.0	4134.0
B	6501.0	6200.0
C	8764.0	8240.0
D	13089.0	12242.0
E	17314.0	16432.0

§ 600.503 Vessel and gear identification.

(a) *Vessel identification.* (1) The operator of each FFV assigned an IRCS must display that call sign amidships on both the port and starboard sides of the deckhouse or hull, so that it is visible from an enforcement vessel, and on an appropriate weather deck so it is visible from the air.

(2) The operator of each FFV not assigned an IRCS, such as a small trawler associated with a mothership or one of a pair of trawlers, must display the IRCS of the associated vessel, followed by a numerical suffix. (For example, JCZM–1, JCZM–2, etc., would be displayed on small trawlers not assigned an IRCS operating with a mothership whose IRCS is JCZM; JANP–1 would be displayed by a pair trawler not assigned an IRCS operating with a trawler whose IRCS is JANP.)

(3) The vessel identification must be in a color in contrast to the background and must be permanently affixed to the FFV in block Roman alphabet letters and Arabic numerals at least 1 m in height for FFV's over 20 m in length, and at least 0.5 m in height for all other FFV's.

(b) *Navigational lights and shapes.* Each FFV must display the lights and shapes prescribed by the International Regulations for Preventing Collisions at Sea, 1972 (TIAS 8587, and 1981 amendment TIAS 10672), for the activity in which the FFV is engaged (as described at 33 CFR part 81).

(c) *Gear identification.* (1) The operator of each FFV must ensure that all deployed fishing gear that is not physically and continuously attached to an FFV:

(i) Is clearly marked at the surface with a buoy displaying the vessel identification of the FFV (see paragraph (a) of this section) to which the gear belongs.

(ii) Has attached a light visible for 2 nautical miles (3.70 km) at night in good visibility.

(iii) Has a radio buoy.

Trawl codends passed from one vessel to another are considered continuously attached gear and are not required to be marked.

(2) The operator of each FFV must ensure that deployed longlines, strings of traps or pots, and gillnets are marked at the surface at each terminal end with: (see paragraphs (c)(1)(i) through (c)(1)(iii) of this section).

(3) Additional requirements may be specified for the fishery in which the vessel is engaged.

(4) Unmarked or incorrectly identified fishing gear may be considered abandoned and may be disposed of in accordance with applicable Federal regulations by any authorized officer.

(d) *Maintenance.* The operator of each FFV must—

(1) Keep the vessel and gear identification clearly legible and in good repair.

(2) Ensure that nothing on the FFV obstructs the view of the markings from an enforcement vessel or aircraft.

(3) Ensure that the proper navigational lights and shapes are

displayed for the FFV's activity and are properly functioning.

§ 600.504 Facilitation of enforcement.

(a) *General.* (1) The owner, operator, or any person aboard any FFV subject to this subpart must immediately comply with instructions and signals issued by an authorized officer to stop the FFV; to move the FFV to a specified location; and to facilitate safe boarding and inspection of the vessel, its gear, equipment, records, and fish and fish products on board for purposes of enforcing the Magnuson Act and this subpart.

(2) The operator of each FFV must provide vessel position or other information when requested by an authorized officer within the time specified in the request.

(b) *Communications equipment.* (1) Each FFV must be equipped with a VHF–FM radiotelephone station located so that it may be operated from the wheelhouse. Each operator must maintain a continuous listening watch on channel 16 (156.8 mHz).

(2) Each FFV must be equipped with a radiotelephone station capable of communicating via 2182 kHz (SSB) radiotelephony and at least one set of working frequencies identified in table 3 to § 600.502 appropriate to the fishery in which the FFV is operating. Each operator must monitor and be ready to communicate via 2182 kHz (SSB) radiotelephone each day from 0800 GMT to 0830 GMT and 2000 to 2030 GMT, and in preparation for boarding.

(3) FFV's that are not equipped with processing facilities and that deliver all catches to a foreign processing vessel are exempt from the requirements of paragraph (b)(2) of this section.

(4) FFV's with no IRCS that do not catch fish and are used as auxiliary vessels to handle codends, nets, equipment, or passengers for a processing vessel are exempt from the requirements of paragraphs (b)(1) and (b)(2) of this section.

(5) The appropriate Regional Director, with the agreement of the appropriate USCG commander, may, upon request by a foreign nation, accept alternatives to the radio requirements of this section to certain FFV's or types of FFV's operating in a fishery, provided they are adequate for the communications needs of the fishery.

(c) *Communications procedures.* (1) Upon being approached by a USCG vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of any FFV subject to this subpart must be alert for communications conveying enforcement instructions. The enforcement unit may communicate by channel 16 VHF–FM radiotelephone, 2182 kHz (SSB) radiotelephone, message block from an aircraft, flashing light or flag signals from the International Code of Signals, hand signal, placard, loudhailer, or other appropriate means. The following signals, extracted from the International Code of Signals, are among those that may be used.

(i) ''AA, AA, AA, etc.'', which is the call for an unknown station. The signaled vessel should respond by identifying itself or by illuminating the vessel identification required by § 600.505.

(ii) ''RY–CY'', meaning ''You should proceed at slow speed, a boat is coming to you''.

(iii) ''SQ3'', meaning ''You should stop or heave to; I am going to board you''.

(iv) ''L'', meaning ''You should stop your vessel instantly.''

(2) Failure of an FFV's operator to stop the vessel when directed to do so by an authorized officer using VHF–FM radiotelephone (channel 16), 2182 kHz (SSB) radiotelephone (where required), message block from an aircraft, flashing light signal, flaghoist, or loudhailer constitutes a violation of this subpart.

(3) The operator of or any person aboard an FFV who does not understand a signal from an enforcement unit and who is unable to obtain clarification by radiotelephone or other means must consider the signal to be a command to stop the FFV instantly.

(d) *Boarding.* The operator of an FFV signaled for boarding must—

(1) Monitor 2182 kHz (SSB) radiotelephone and channel 16 (156.8 mHz) VHF–FM radiotelephone.

(2) Stop immediately and lay to or maneuver in such a way as to maintain the safety of the FFV and facilitate boarding by the authorized officer and the boarding party or an observer.

(3) Provide the authorized officer, boarding party, or observer a safe pilot ladder. The operator must ensure the pilot ladder is securely attached to the FFV and meets the construction requirements of Regulation 17, Chapter V of the International Convention for the Safety of Life at Sea (SOLAS), 1974 (TIAS 9700 and 1978 Protocol, TIAS 10009), or a substantially equivalent national standard approved by letter from the Assistant Administrator, with agreement with the USCG. Safe pilot ladder standards are summarized below:

(i) The ladder must be of a single length of not more than 9 m (30 ft), capable of reaching the water from the point of access to the FFV, accounting for all conditions of loading and trim of the FFV and for an adverse list of 15°. Whenever the distance from sea level to the point of access to the ship is more than 9 m (30 ft), access must be by means of an accommodation ladder or other safe and convenient means.

(ii) The steps of the pilot ladder must be—

(A) Of hardwood, or other material of equivalent properties, made in one piece free of knots, having an efficient non-slip surface; the four lowest steps may be made of rubber of sufficient strength and stiffness or of other suitable material of equivalent characteristics.

(B) Not less than 480 mm (19 inches) long, 115 mm (4.5 inches) wide, and 25 mm (1 inch) in depth, excluding any non-slip device.

(C) Equally spaced not less than 300 millimeters (12 inches) nor more than 380 mm (15 inches) apart and secured in such a manner that they will remain horizontal.

(iii) No pilot ladder may have more than two replacement steps that are secured in position by a method different from that used in the original construction of the ladder.

(iv) The side ropes of the ladder must consist of two uncovered manila ropes not less than 60 mm (2.25 inches) in circumference on each side (or synthetic ropes of equivalent size and equivalent or greater strength). Each rope must be continuous, with no joints below the top step.

(v) Battens made of hardwood, or other material of equivalent properties, in one piece and not less than 1.80 m (5 ft 10 inches) long must be provided at such intervals as will prevent the pilot ladder from twisting. The lowest batten must be on the fifth step from the bottom of the ladder and the interval between any batten and the next must not exceed nine steps.

(vi) Where passage onto or off the ship is by means of a bulwark ladder, two handhold stanchions must be fitted at the point of boarding or leaving the FFV not less than 0.70 m (2 ft 3 inches) nor more than 0.80 m (2 ft 7 inches) apart, not less than 40 mm (2.5 inches) in diameter, and must extend not less than 1.20 m (3 ft 11 inches) above the top of the bulwark.

(4) When necessary to facilitate the boarding or when requested by an authorized officer or observer, provide a manrope, safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to ensure the safety of the authorized officer and the boarding party and to facilitate the boarding and inspection.

(e) *Access and records.* (1) The owner and operator of each FFV must provide

authorized officers access to all spaces where work is conducted or business papers and records are prepared or stored, including but not limited to, personal quarters and areas within personal quarters.

(2) The owner and operator of each FFV must provide to authorized officers all records and documents pertaining to the fishing activities of the vessel, including but not limited to, production records, fishing logs, navigation logs, transfer records, product receipts, cargo stowage plans or records, draft or displacement calculations, customs documents or records, and an accurate hold plan reflecting the current structure of the vessel's storage and factory spaces.

(f) *Product storage.* The operator of each permitted FFV storing fish or fish products in a storage space must ensure that all non-fish product items are neither stowed beneath nor covered by fish products, unless required to maintain the stability and safety of the vessel. These items include, but are not limited to, portable conveyors, exhaust fans, ladders, nets, fuel bladders, extra bin boards, or other movable non-product items. These items may be in the space when necessary for safety of the vessel or crew or for storage of the product. Lumber, bin boards, or other dunnage may be used for shoring or bracing of product to ensure safety of crew and to prevent shifting of cargo within the space.

§ 600.505 Prohibitions.

(a) It is unlawful for any person to do any of the following:

(1) Ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of any fish taken or retained in violation of the Magnuson Act, the applicable GIFA, this subpart, or any permit issued under this subpart;

(2) Refuse to allow an authorized officer to board an FFV for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, the applicable GIFA, this subpart, or any other permit issued under this subpart;

(3) Assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any inspection or search described in paragraph (a)(2) of this section;

(4) Resist a lawful arrest for any act prohibited by the Magnuson Act, the applicable GIFA, this subpart, or any permit issued under this subpart;

(5) Interfere with, delay, or prevent by any means the apprehension or arrest of another person with the knowledge that such other person has committed any act prohibited by the Magnuson Act, the applicable GIFA, this subpart, or any permit issued under this subpart;

(6) Interfere with, obstruct, delay, oppose, impede, intimidate, or prevent by any means any boarding, investigation or search, wherever conducted, in the process of enforcing the Magnuson Act, the applicable GIFA, this subpart, or any permit issued under this subpart;

(7) Engage in any fishing activity for which the FFV does not have a permit as required under § 600.501;

(8) Engage in any fishing activity within the EEZ without a U.S. observer aboard the FFV, unless the requirement has been waived by the appropriate Regional Director;

(9) Retain or attempt to retain within the EEZ, directly or indirectly, any U.S. harvested fish, unless the FFV has a permit for Activity Codes 4 or 6.

(10) Use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued under this subpart;

(11) Violate any provision of the applicable GIFA;

(12) Falsely or incorrectly complete (including by omission) a permit application or permit form as specified in § 600.501 (d) and (k);

(13) Fail to report to the Assistant Administrator within 15 days any change in the information contained in the permit application for a FFV, as specified in § 600.501(k);

(14) Assault, resist, oppose, impede, intimidate, or interfere with an observer placed aboard an FFV under this subpart;

(15) Interfere with or bias the sampling procedure employed by an observer, including sorting or discarding any catch prior to sampling, unless the observer has stated that sampling will not occur; or tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic film, papers, or effects without the express consent of the observer;

(16) Prohibit or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer from collecting samples, conducting product recovery rate determinations, making observations, or otherwise performing the observer's duties;

(17) Harass or sexually harass an authorized officer or observer;

(18) Fail to provide the required assistance to an observer as described at § 600.506 (c) and (e);

(19) Fail to identify, falsely identify, fail to properly maintain, or obscure the identification of the FFV or its gear as required by this subpart;

(20) Falsify or fail to make, keep, maintain, or submit any record or report required by this subpart;

(21) Fail to return to the sea or fail to otherwise treat prohibited species as required by this subpart;

(22) Fail to report or falsely report any gear conflict;

(23) Fail to report or falsely report any loss, jettisoning, or abandonment of fishing gear or other article into the EEZ that might interfere with fishing, obstruct fishing gear or vessels, or cause damage to any fishery resource or marine mammals;

(24) Continue Activity Codes 1 through 4 after those activity codes have been canceled under § 600.511;

(25) Fail to maintain health and safety standards set forth in § 600.506(d);

(26) Violate any provisions of regulations for specific fisheries of this subpart;

(27) On a scientific research vessel, engage in fishing other than recreational fishing authorized by applicable state, territorial, or Federal regulations;

(28) Violate any provision of this subpart, the Magnuson Act, the applicable GIFA, any notice issued under this subpart or any permit issued under this subpart; or

(29) Attempt to do any of the foregoing.

(b) It is unlawful for any FFV, and for the owner or operator of any FFV except an FFV engaged only in recreational fishing, to fish—

(1) Within the boundaries of any state, unless the fishing is authorized by the Governor of that state as permitted by section 306(c) of the Magnuson Act to engage in a joint venture for processing and support with U.S. fishing vessels in the internal waters of that state; or

(2) Within the EEZ, or for any anadromous species or continental shelf fishery resources beyond the EEZ, unless the fishing is authorized by, and conducted in accordance with, a valid permit issued under § 600.501.

§ 600.506 Observers.

(a) *General.* To carry out such scientific, compliance monitoring, and other functions as may be necessary or appropriate to carry out the purposes of the Magnuson Act, the appropriate Regional or Science and Research Director (see table 2 to § 600.502) may assign U.S. observers to FFV's. Except as provided for in section 201(i)(2) of the Magnuson Act, no FFV may conduct fishing operations within the EEZ unless a U.S. observer is aboard.

(b) *Effort plan.* To ensure the availability of an observer as required by this section, the owners and operators of FFV's wanting to fish within the EEZ

will submit to the appropriate Regional Director or Science and Research Director; and also to the Chief, Office of Enforcement, NMFS, Silver Spring, MD, a schedule of fishing effort 30 days prior to the beginning of each quarter. A quarter is a time period of 3 consecutive months beginning January 1, April 1, July 1, and October 1 of each year. The schedule will contain the name and IRCS of each FFV intending to fish within the EEZ during the upcoming quarter, and each FFV's expected date of arrival and expected date of departure.

(1) The appropriate Regional or Science and Research Director must be notified immediately of any substitution of vessels or any cancellation of plans to fish in the EEZ for FFV's listed in the effort plan required by this section.

(2) If an arrival date of an FFV will vary more than 5 days from the date listed in the quarterly schedule, the appropriate Regional or Science and Research Director must be notified at least 10 days in advance of the rescheduled date of arrival. If the notice required by this paragraph (b)(2) is not given, the FFV may not engage in fishing until an observer is available and has been placed aboard the vessel or the requirement has been waived by the appropriate Regional or Science and Research Director.

(c) *Assistance to observers.* To assist the observer in the accomplishment of his or her assigned duties, the owner and operator of an FFV to which an observer is assigned must—

(1) Provide, at no cost to the observer or the United States, accommodations for the observer aboard the FFV that are equivalent to those provided to the officers of that vessel.

(2) Cause the FFV to proceed to such places and at such times as may be designated by the appropriate Regional or Science and Research Director for the purpose of embarking and debarking the observer.

(3) Allow the observer to use the FFV's communications equipment and personnel upon demand for the transmission and receipt of messages.

(4) Allow the observer access to and use of the FFV's navigation equipment and personnel upon demand to determine the vessel's position.

(5) Allow the observer free and unobstructed access to the FFV's bridge, trawl, or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(6) Allow the observer to inspect and copy the FFV's daily log, communications log, transfer log, and any other log, document, notice, or record required by these regulations.

(7) Provide the observer copies of any records required by these regulations upon demand.

(8) Notify the observer at least 15 minutes before fish are brought on board or fish or fish products are transferred from the FFV to allow sampling the catch or observing the transfer, unless the observer specifically requests not to be notified.

(9) Provide all other reasonable assistance to enable the observer to carry out his or her duties.

(d) *Health and safety standards.* All foreign fishing vessels to which an observer is deployed must maintain, at all times that the vessel is in the EEZ, the following:

(1) At least one working radar.

(2) Functioning navigation lights as required by international law.

(3) A watch on the bridge by appropriately trained and experienced personnel while the vessel is underway.

(4) Lifeboats and/or inflatable life rafts with a total carrying capacity equal to or greater than the number of people aboard the vessel. Lifeboats and inflatable life rafts must be maintained in good working order and be readily available.

(5) Life jackets equal or greater in number to the total number of persons aboard the vessel. Life jackets must be stowed in readily accessible and plainly marked positions throughout the vessel, and maintained in a state of good repair.

(6) At least one ring life buoy for each 25 ft (7.6 m) of vessel length, equipped with automatic water lights. Ring life buoys must have an outside diameter of not more than 32 inches (81.3 cm) nor less than 30 inches (76.2 cm), and must be maintained in a state of good repair. Ring life buoys must be readily available, but not positioned so they pose a threat of entanglement in work areas. They must be secured in such a way that they can be easily cast loose in the event of an emergency.

(7) At least one VHF–FM radio with a functioning channel 16 (156.8 mHz), International Distress, Safety and Calling Frequency, and one functioning AM radio (SSB-Single Side Band) capable of operating at 2182 kHz (SSB). Radios will be maintained in a radio room, chartroom, or other suitable location.

(8) At least one Emergency Position Indicating Radio Beacon (EPIRB), approved by the USCG for offshore commercial use, stowed in a location so as to make it readily available in the event of an emergency.

(9) At least six hand-held, rocket-propelled, parachute, red-flare distress signals, and three orange-smoke distress signals stowed in the pilothouse or navigation bridge in portable watertight containers.

(10) All lights, shapes, whistles, foghorns, fog bells and gongs required by and maintained in accordance with the International Regulations for Preventing Collisions at Sea.

(11) Clean and sanitary conditions in all living spaces, food service and preparation areas and work spaces aboard the vessel.

(e) *Observer transfers.* (1) The operator of the FFV must ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours as weather and sea conditions allow, and with the agreement of the observer involved. The FFV operator must provide the observer 3 hours advance notice of at-sea transfers, so that the observer may collect personal belongings, equipment, and scientific samples.

(2) The FFV's involved must provide a safe pilot ladder and conduct the transfer according to the procedures of § 600.504(d) to ensure the safety of the during the transfer.

(3) An experienced crew member must assist the observer in the small boat or raft in which the transfer is made.

(f) *Supplementary observers.* In the event funds are not available from Congressional appropriations of fees collected to assign an observer to a foreign fishing vessel, the appropriate Regional or Science and Research Director will assign a supplementary observer to that vessel. The costs of supplementary observers will be paid for by the owners and operators of foreign fishing vessels as provided for in paragraph (h) of this section.

(g) *Supplementary observer authority and duties.* (1) A supplementary observer aboard a foreign fishing vessel has the same authority and must be treated in all respects as an observer who is employed by NMFS, either directly or under contract.

(2) The duties of supplementary observers and their deployment and work schedules will be specified by the appropriate Regional or Science and Research Director.

(3) All data collected by supplementary observers will be under the exclusive control of the Assistant Administrator.

(h) *Supplementary observer payment*—(1) *Method of payment.* The owners and operators of foreign fishing vessels must pay directly to the contractor the costs of supplementary observer coverage. Payment must be made to the contractor supplying

supplementary observer coverage either by letter of credit or certified check drawn on a federally chartered bank in U.S. dollars, or other financial institution acceptable to the contractor. The letter of credit used to pay supplementary observer fees to contractors must be separate and distinct from the letter of credit required by § 600.518(b)(2). Billing schedules will be specified by the terms of the contract between NOAA and the contractors. Billings for supplementary observer coverage will be approved by the appropriate Regional or Science and Research Director and then transmitted to the owners and operators of foreign fishing vessels by the appropriate designated representative. Each country will have only one designated representative to receive observer bills for all vessels of that country, except as provided for by the Assistant Administrator. All bills must be paid within 10 working days of the billing date. Failure to pay an observer bill will constitute grounds to revoke fishing permits. All fees collected under this section will be considered interim in nature and subject to reconciliation at the end of the fiscal year in accordance with paragraph (h)(4) of this section and § 600.518(d).

(2) *Contractor costs.* The costs charged for supplementary observer coverage to the owners and operators of foreign fishing vessels may not exceed the costs charged to NMFS for the same or similar services, except that contractors may charge to the owners and operators of foreign fishing vessels an additional fee to cover the administrative costs of the program not ordinarily part of contract costs charged to NMFS. The costs charged foreign fishermen for supplementary observers may include, but are not limited to the following:

(i) Salary and benefits, including overtime, for supplementary observers.

(ii) The costs of post-certification training required by paragraph (j)(2) of this section.

(iii) The costs of travel, transportation, and per diem associated with deploying supplementary observers to foreign fishing vessels including the cost of travel, transportation, and per diem from the supplementary observer's post of duty to the point of embarkation to the foreign fishing vessel, and then from the point of disembarkation to the post of duty from where the trip began. For the purposes of these regulations, the appropriate Regional or Science and Research Director will designate posts of duty for supplementary observers.

(iv) The costs of travel, transportation, and per diem associated with the debriefing following deployment of a supplementary observer by NMFS officials.

(v) The administrative and overhead costs incurred by the contractor and, if appropriate, a reasonable profit.

(3) *NMFS costs.* The owners and operators of foreign fishing vessels must also pay to NMFS as part of the surcharge required by section 201(i)(4) of the Magnuson Act, the following costs:

(i) The costs of certifying applicants for the position of supplementary observer.

(ii) The costs of any equipment, including safety equipment, sampling equipment, operations manuals, or other texts necessary to perform the duties of a supplementary observer. The equipment will be specified by the appropriate Regional or Science and Research Director according to the requirements of the fishery to which the supplementary observer will be deployed.

(iii) The costs associated with communications with supplementary observers for transmission of data and routine messages.

(iv) For the purposes of monitoring the supplementary observer program, the costs for the management and analysis of data.

(v) The costs for data editing and entry.

(vi) Any costs incurred by NMFS to train, deploy or debrief a supplementary observer.

(vii) The cost for U.S. Customs inspection for supplementary observers disembarking after deployment.

(4) *Reconciliation.* Fees collected by the contractor in excess of the actual costs of supplementary observer coverage will be refunded to the owners and operators of foreign fishing vessels, or kept on deposit to defray the costs of future supplementary observer coverage. Refunds will be made within 60 days after final costs are determined and approved by NMFS.

(i) *Supplementary observer contractors*—(1) *Contractor eligibility.* Supplementary observers will be obtained by NMFS from persons or firms having established contracts to provide NMFS with observers. In the event no such contract is in place, NMFS will use established, competitive contracting procedures to select persons or firms to provide supplementary observers. The services supplied by the supplementary observer contractors will be as described within the contract and as specified below.

(2) Supplementary observer contractors must submit for the approval of the Assistant Administrator the following:

(i) A copy of any contract, including all attachments, amendments, and enclosures thereto, between the contractor and the owners and operators of foreign fishing vessels for whom the contractor will provide supplementary observer services.

(ii) All application information for persons whom the contractor desires to employ as certified supplementary observers.

(iii) Billing schedules and billings to the owners and operators of foreign fishing vessels for further transmission to the designated representative of the appropriate foreign nation.

(iv) All data on costs.

(j) *Supplementary observers—certification, training*—(1) *Certification.* The appropriate Regional or Science and Research Director will certify persons as qualified for the position of supplementary observer once the following conditions are met:

(i) The candidate is a citizen or national of the United States.

(ii) The candidate has education or experience equivalent to the education or experience required of persons used as observers by NMFS as either Federal personnel or contract employees. The education and experience required for certification may vary according to the requirements of managing the foreign fishery in which the supplementary observer is to be deployed. Documentation of U.S. citizenship or nationality, and education or experience will be provided from personal qualification statements on file with NMFS contractors who provide supplementary observer services, and will not require the submission of additional information to NMFS.

(2) *Training.* Prior to deployment to foreign fishing vessels, certified supplementary observers must also meet the following conditions:

(i) Each certified supplementary observer must satisfactorily complete a course of training approved by the appropriate Regional or Science and Research Director as equivalent to that received by persons used as observers by NMFS as either Federal personnel or contract employees. The course of training may vary according to the foreign fishery in which the supplementary observer is to be deployed.

(ii) Each certified supplementary observer must agree in writing to abide by standards of conduct as set forth in Department of Commerce Administrative Order 202–735 (as provided by the contractor).

(k) *Supplementary observer certification suspension or revocation.* (1) Certification of a supplementary observer may be suspended or revoked by the Assistant Administrator under the following conditions:

(i) A supplementary observer fails to perform the duties specified in paragraph (g)(2) of this section.

(ii) A supplementary observer fails to abide by the standards of conduct described by Department of Commerce Administrative Order 202–735.

(2) The suspension or revocation of the certification of a supplementary observer by the Assistant Administrator may be based on the following:

(i) Boarding inspection reports by authorized officers of the USCG or NMFS, or other credible information, that indicate a supplementary observer has failed to abide by the established standards of conduct; or

(ii) An analysis by NMFS of the data collected by a supplementary observer indicating improper or incorrect data collection or recording. The failure to properly collect or record data is sufficient to justify decertification of supplementary observers; no intent to defraud need be demonstrated.

(3) The Assistant Administrator will notify the supplementary observer, in writing, of the Assistant Administrator's intent to suspend or revoke certification, and the reasons therefor, and provide the supplementary observer a reasonable opportunity to respond. If the Assistant Administrator determines that there are disputed questions of material fact, then the Assistant Administrator may in this respect appoint an examiner to make an informal fact-finding inquiry and prepare a report and recommendations.

§ 600.507 Recordkeeping.

(a) *General.* The owner and operator of each FFV must maintain timely and accurate records required by this section as modified by the regulations for the fishery in which the FFV is engaged.

(1) The owner and operator of each FFV must maintain all required records in English, based on Greenwich mean time (GMT) unless otherwise specified in the regulation, and make them immediately available for inspection upon the request of an authorized officer or observer.

(2) The owner and operator of each FFV must retain all required records on board the FFV whenever it is in the EEZ, for 3 years after the end of the permit period.

(3) The owner and operator of each FFV must retain the required records and make them available for inspection upon the request of an authorized officer at any time during the 3 years after the end of the permit period, whether or not such records are on board the vessel.

(4) The owner and operator of each FFV must provide to the Assistant Administrator, in the form and at the times prescribed, any other information requested that the Assistant Administrator determines is necessary to fulfill the fishery conservation, management and enforcement purposes of the Magnuson Act.

(b) *Communications log.* The owner and operator of each FFV must record in a separate communications log, at the time of transmittal, the time and content of each notification made under § 600.504.

(c) *Transfer log.* Except for the transfer of unsorted, unprocessed fish via codend from a catching vessel to a processing vessel (Activity Code 2 or 4), the owner and operator of each FFV must record, in a separate transfer log, each transfer or receipt of any fish or fishery product, including quantities transferred or offloaded outside the EEZ. The operator must record in the log within 12 hours of the completion of the transfer:

(1) The time and date (GMT) and location (in geographic coordinates) the transfer began and was completed.

(2) The product weight, by species and product (use species and product codes), of all fish transferred, to the nearest 0.01 mt.

(3) The name, IRCS, and permit number of both the FFV offloading the fish and the FFV receiving the fish.

(d) *Daily fishing log.* (1) The owner or operator of each FFV authorized to catch fish (Activity Code 1) must maintain a daily fishing log of the effort, catch and production of the FFV, as modified by paragraph (d)(2) of this section and the regulations for the fishery in which the FFV is engaged. The operator must maintain on a daily and cumulative basis for the permit period a separate log for each fishery (see table 2 to § 600.502) in which the FFV is engaged according to this section and in the format specified in the instructions provided with the permit or other format authorized under paragraph (i) of this section. Daily effort entries are required for each day the vessel conducts fishing operations within the EEZ. Daily entries are not required whenever the FFV is in port or engaged in a joint venture in the internal waters of a state. Each page of log may contain entries pertaining to only one day's fishing operations or one gear set, whichever is longer.

(2) The owner or operator of each FFV authorized to catch fish (Activity Code 1) and that delivers all catches to a processing vessel, must maintain only ''SECTION ONE-EFFORT'', of the daily fishing log, provided the processing vessel maintains a daily consolidated fishing log as described in paragraphs (f) and (g) of this section.

(e) *Daily fishing log—contents.* The daily fishing log must contain the following information, as modified by paragraph (d)(2) of this section and the regulations for the fishery in which the FFV is engaged, and be completed according to the format and instructions provided with the permit or other format authorized under paragraph (i) of this section.

(1) ''SECTION ONE-EFFORT'' must contain on a daily basis—

(i) A consecutive page number, beginning with the first day the vessel started fishing operations within the EEZ and continuing throughout the log.

(ii) The date (based on GMT).

(iii) The FFV's name.

(iv) The FFV's IRCS.

(v) The FFV's U.S. permit number.

(vi) The FFV's noon (1200 GMT) position in geographic coordinates.

(vii) The master or operator's signature or title.

(2) ''SECTION ONE-EFFORT'' must contain, for each trawl or set, as appropriate to the gear type employed—

(i) The consecutive trawl or set number, beginning with the first set of the calendar year.

(ii) The fishing area in which the trawl or set was completed.

(iii) The gear type.

(iv) The time the gear was set.

(v) The position of the set.

(vi) The course of the set.

(vii) The sea depth.

(viii) The depth of the set.

(ix) The duration of the set.

(x) The hauling time.

(xi) The position of the haul.

(xii) The number of pots or longline units (where applicable).

(xiii) The average number of hooks per longline unit (where applicable).

(xiv) The trawl speed (where applicable).

(xv) The mesh size of the trawl's codend (where applicable).

(xvi) The estimated total weight of the catch for the trawl of set, to at least the nearest metric ton round weight.

(3) ''SECTION TWO-CATCH'' must contain, for each trawl or set—

(i) The consecutive set or trawl number from ''SECTION ONE''.

(ii) The catch of each allocated species or species group to at least the nearest 0.1 mt round weight.

(iii) The prohibited species catch to at least the nearest 0.1 mt round weight or by number, as required by the

regulations for the fishery in which the FFV is engaged.

(iv) The species code of each marine mammal caught and its condition when released.

(4) ''SECTION TWO-CATCH'' must contain, on a daily basis—

(i) The species codes for all allocated or prohibited species or species groups caught.

(ii) For each allocated species—the amount, to at least the nearest 0.1 mt, and the daily disposition, either processed for human consumption, used for fishmeal, or discarded; the daily catch by fishing area; the daily catch for all fishing areas; and the cumulative total catch.

(iii) For the total catch of allocated species—the amount to at least the nearest 0.1 mt and the daily disposition, daily total catch by fishing area, daily total catch for all fishing areas, and cumulative total catch.

(iv) The catch by fishing area, daily total, and cumulative total of each prohibited species.

(5) ''SECTION THREE—PRODUCTION'' must contain, on a daily basis, for each allocated species caught and product produced—

(i) The product by species code and product type.

(ii) The daily product recovery rate of each species and product.

(iii) The daily total product produced by species to at least the nearest 0.01 mt.

(iv) The cumulative total of each product to at least the nearest 0.01 mt.

(v) The cumulative amount of product transferred.

(vi) The balance of product remaining aboard the FFV.

(vii) The total daily amount, cumulative amount, transferred product and balance of frozen product aboard the FFV to the nearest 0.01 mt.

(viii) Transferred amount and balance of fishmeal and fish oil aboard to at least the nearest 0.01 mt.

(f) *Daily consolidated fishing or joint venture log.* The operator of each FFV that receives unsorted, unprocessed fish from foreign catching vessels (Activity Code 2) for processing or receives U.S.-harvested fish from U.S. fishing vessels in a joint venture (Activity Code 4) must maintain a daily joint venture log of the effort, catch and production of its associated U.S. or foreign fishing vessels and the processing vessel as modified by the regulations for the fishery in which the FFV is engaged. This log is separate and in addition to the log required by paragraph (d) of this section. The operator must maintain a separate log for each fishery in which the FFV is engaged, on a daily and cumulative basis, according to this section and in the format specified in the instructions provided with the permit or other format authorized under paragraph (i) of this section. Receipts of fish caught outside the EEZ must be included. Each page of the log may contain entries pertaining to only one day's fishing operations.

(g) *Daily joint venture log—contents.* Daily joint venture logs must contain the following information, as modified by the fishery in which the vessel is engaged, and be completed according to the format and instructions provided with the permit or other format authorized under paragraph (i) of this section.

(1) ''SECTION ONE-EFFORT'' must contain, on a daily basis, that information required in paragraph (e)(1) of this section.

(2) ''SECTION ONE-EFFORT'' must contain for each receipt of a codend—

(i) The consecutive codend number, beginning with the first codend received for the calendar year.

(ii) The name of the U.S. fishing vessel or the name and IRCS of the foreign fishing vessel the codend was received from.

(iii) The fishing area where the codend was received.

(iv) The time the codend was received.

(v) The position the codend was received.

(vi) The estimated weight of the codend to at least the nearest metric ton round weight.

(3) ''SECTION TWO-CATCH'' must contain, for each codend received—

(i) The consecutive codend number from ''SECTION ONE''.

(ii) The receipts of each authorized species or species group and its disposition, either processed for human consumption, used for fishmeal, discarded, or returned to the U.S. fishing vessel, to at least the nearest 0.1 mt round weight.

(iii) The estimated receipts of each prohibited species or species group and its disposition, either discarded or returned to the U.S. fishing vessel if authorized in the fishery in which the U.S. vessel is engaged, to at least the nearest 0.1 mt round weight.

(iv) The species code of each marine mammal received and its condition when released.

(4) ''SECTION TWO-CATCH'' must contain on a daily basis—

(i) The species codes of all authorized or prohibited species or species groups received.

(ii) The daily disposition, as described in paragraph (g)(3)(ii) of this section, daily total, and cumulative total receipts of each authorized species or species groups.

(iii) The daily disposition, daily total and cumulative total receipts of all authorized species or species groups.

(iv) The daily and cumulative total receipts of prohibited species groups and their disposition as described in paragraph (g)(3)(iii) of this section.

(5) ''SECTION THREE—PRODUCTION'' must contain, on a daily basis, for each authorized species or species group received and product produced, that information required in paragraph (e)(5) of this section.

(h) *Daily log maintenance.* The logs required by paragraphs (e) through (g) of this section must be maintained separately for each fishery (see table 2 to § 600.502).

(1) The effort section (all of ''SECTION ONE'') of the daily logs must be updated within 2 hours of the hauling or receipt time. The catch or receipt by trawl or set (''SECTION TWO'') must be entered within 12 hours of the hauling or receipt time. The daily and cumulative total catch or receipts (''SECTION TWO'') and the production portion (''SECTION THREE'') of the log must be updated within 12 hours of the end of the day on which the catch was taken. The date of catch is the day and time (GMT) the gear is hauled.

(2) Entries for total daily and cumulative catch or receipt weights (disposition ''C'' or ''M'') must be based on the most accurate method available to the vessel, either scale round weights or factory weights converted to round weights. Entries for daily and cumulative weights of discarded or returned fish (disposition ''D'' or ''R'') must be based on the most accurate method available to the vessel, either actual count, scale round weight, or estimated deck weights. Entries for product weights must be based on the number of production units (pans, boxes, blocks, trays, cans, or bags) and the average weight of the production unit, with reasonable allowances for water added. Allowances for water added cannot exceed 5 percent of the unit weight. Product weights cannot be based on the commercial or arbitrary wholesale weight of the product, but must be based on the total actual weight of the product as determined by representative samples.

(3) The owner or operator must make all entries in indelible ink, with corrections to be accomplished by lining out and rewriting, rather than erasure.

(i) Alternative log formats. As an alternative to the use of the specific formats provided, a Nation may submit a proposed log format for FFV's of that Nation for a general type of fishery operation in a fishery (i.e., joint venture operations) to the appropriate Regional

Director and the USCG commander (see tables 1 and 2 to § 600.502). With the agreement of the USCG commander, the Regional Director may authorize the use of that log format for vessels of the requesting Nation.

§ 600.508 Fishing operations.

(a) *Catching.* Each FFV authorized for activity code 1 may catch fish. An FFV may retain its catch of any species or species group for which there is an unfilled national allocation. All fish caught will be counted against the national allocation, even if the fish are discarded, unless exempted by the regulations of the fishery in which the FFV is engaged. Catching operations may be conducted as specified by the regulations of the fishery in which the FFV is engaged and as modified by the FFV's permit.

(b) *Scouting.* Each FFV authorized for Activity Codes 1 through 6 may scout for fish. Scouting may be conducted only in the fisheries area authorized by the scouting vessel's permit and under such other circumstances as may be designated in this subpart or the permit.

(c) *Processing.* Each FFV with Activity Code 1 or 2 may process fish. Processing may only be conducted whenever and wherever catching operations for FFV's of that Nation are permitted, whenever and wherever joint venture operations are authorized by an FFV's permit under Activity Code 4, and under such other circumstances as may be designated in this subpart or the permit.

(d) *Support.* Each FFV with Activity Codes 1, 2, 3, 5, or 8 may support other permitted FFV's. Each FFV with Activity Codes 4 or 6 may support U.S. vessels. Support operations may be conducted only in the fisheries areas authorized by the supporting vessel's permit, and under such other circumstances as may be designated in this subpart or the permit.

(e) *Joint ventures.* Each FFV with Activity Code 4 in addition to Activity Codes 1 or 2 may also conduct operations with U.S. fishing vessels. These joint venture operations with U.S. fishing vessels may be conducted throughout the EEZ, and under such other circumstances as may be designated in these regulations or the permit. FFV's with activity code 4 may continue operations assisting U.S. fishing vessels, despite closures under § 600.511(a).

(f) Each FFV authorized by the Governor of a state under section 306(c) of the Magnuson Act may engage in processing and support of U.S. fishing vessels within the internal waters of that state in compliance with terms and conditions set by the authorizing Governor.

§ 600.509 Prohibited species.

(a) The owner or operator of each FFV must minimize its catch or receipt of prohibited species.

(b) After allowing for sampling by an observer (if any), the owner or operator of each FFV must sort its catch of fish received as soon as possible and return all prohibited species and species parts to the sea immediately with a minimum of injury, regardless of condition, unless a different procedure is specified by the regulations for the fishery in which the FFV is engaged. All prohibited species must be recorded in the daily fishing log and other fishing logs as specified by the regulations for the fishery in which the FFV is engaged.

(c) All species of fish that an FFV has not been specifically allocated or authorized under this subpart to retain, including fish caught or received in excess of any allocation or authorization, are prohibited species.

(d) It is a rebuttable presumption that any prohibited species or species part found on board an FFV was caught and retained in violation of this section.

§ 600.510 Gear avoidance and disposal.

(a) *Vessel and gear avoidance.* (1) FFV's arriving on fishing grounds where fishing vessels are already fishing or have set their gear for that purpose must ascertain the position and extent of gear already placed in the sea and must not place themselves or their fishing gear so as to interfere with or obstruct fishing operations already in progress. Vessels using mobile gear must avoid fixed fishing gear.

(2) The operator of each FFV must maintain on its bridge a current plot of broadcast fixed-gear locations for the area in which it is fishing, as required by the regulations for the fishery in which the FFV is engaged.

(b) *Gear conflicts.* The operator of each FFV that is involved in a conflict or that retrieves the gear of another vessel must immediately notify the appropriate USCG commander identified in tables 1 and 2 to § 600.502 and request disposal instructions. Each report must include:

(1) The name of the reporting vessel.

(2) A description of the incident and articles retrieved, including the amount, type of gear, condition, and identification markings.

(3) The location of the incident.

(4) The date and time of the incident.

(c) *Disposal of fishing gear and other articles.* (1) The operator of an FFV in the EEZ may not dump overboard, jettison or otherwise discard any article or substance that may interfere with other fishing vessels or gear, or that may catch fish or cause damage to any marine resource, including marine mammals and birds, except in cases of emergency involving the safety of the ship or crew, or as specifically authorized by communication from the appropriate USCG commander or other authorized officer. These articles and substances include, but are not limited to, fishing gear, net scraps, bale straps, plastic bags, oil drums, petroleum containers, oil, toxic chemicals or any manmade items retrieved in an FFV's gear.

(2) The operator of an FFV may not abandon fishing gear in the EEZ.

(3) If these articles or substances are encountered, or in the event of accidental or emergency placement into the EEZ, the vessel operator must immediately report the incident to the appropriate USCG Commander indicated in tables 1 and 2 to § 600.502, and give the information required in paragraph (b) of this section.

§ 600.511 Fishery closure procedures.

(a) Activity Codes 1 and 2 for a fishery are automatically canceled in the following cases, unless otherwise specified by regulations specific to a fishery, when—

(1) The OY for any allocated species or species group has been reached in that fishery;

(2) The TALFF or catch allowance for any allocated species or species group has been reached in that fishery;

(3) The foreign nation's allocation for any allocated species or species group has been reached; or

(4) The letter of credit required in § 600.518(b)(2) is not established and maintained.

(b) Activity Code 4 is automatically canceled when—

(1) The OY for a species with a JVP amount is reached;

(2) The JVP amount for a species or species group is reached; or

(3) The letter of credit required in § 600.518(b)(2) is not established and maintained.

(c) *Notification.* (1) The Regional Director is authorized to close a fishery on behalf of NMFS. The Regional Director will notify each FFV's designated representative of closures.

(2) If possible, notice will be given 48 hours before the closure. However, each Nation and the owners and operators of all FFV's of that Nation are responsible for ending fishing operations when an allocation is reached.

(d) *Catch reconciliation.* Vessel activity reports, U.S. surveillance observations, observer reports, and

foreign catch and effort reports will be used to make the determination listed in paragraphs (a) and (b) of this section. If NMFS estimates of catch or other values made during the season differ from those reported by the foreign fleets, efforts may be initiated by the designated representative of each Nation to resolve such differences with NMFS. If, however, differences still persist after such efforts have been made, NMFS estimates will be the basis for decisions and will prevail.

(e) *Duration.* Any closure under this section will remain in effect until an applicable new or increased allocation or JVP becomes available or the letter of credit required by § 600.518(b)(2) is reestablished.

§ 600.512 Scientific research.

(a) *Scientific research activity.* Persons planning to conduct scientific research activities in the EEZ that may be confused with fishing are encouraged to submit to the appropriate Regional Director, Director, or designee, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific cruise. The Regional Director, Director, or designee will acknowledge notification of scientific research activity by issuing to the operator or master of that vessel, or to the sponsoring institution, a letter of acknowledgment. This letter of acknowledgment is separate and distinct from any permit required under any other applicable law. If the Regional Director, Director, or designee, after review of a research plan, determines that it does not constitute scientific research activity, but rather fishing, the Regional Director, Director, or designee will inform the applicant as soon as practicable and in writing. The Regional Director, Director, or designee may also make recommendations to revise the research plan to make the cruise acceptable as scientific research activity. In order to facilitate identification of activity as scientific research, persons conducting scientific research activities are advised to carry a copy of the scientific research plan and the letter of acknowledgment on board the scientific research vessel. Activities conducted in accordance with a scientific research plan acknowledged by such a letter are presumed to be scientific research activities. The presumption may be overcome by showing that an activity does not fit the definition of scientific research activity or is outside the scope of the scientific research plan.

(b) *Reports.* Persons conducting scientific research are requested to submit a copy of any cruise report or other publication created as a result of the cruise, including the amount, composition, and disposition of their catch, to the appropriate Science and Research Director.

§ 600.513 Recreational fishing.

(a) Foreign vessels conducting recreational fishing must comply only with this section, and §§ 600.10, 600.504(a)(1), and 600.505 (as applicable). Such vessels may conduct recreational fishing within the EEZ and within the boundaries of a state. Any fish caught may not be sold, bartered, or traded.

(b) The owners or operator and any other person aboard any foreign vessel conducting recreational fishing must comply with any Federal laws or regulations applicable to the domestic fishery while in the EEZ, and any state laws or regulations applicable while in state waters.

§ 600.514 Relation to other laws.

(a) Persons affected by these regulations should be aware that other Federal and state statutes may apply to their activities.

(b) Fishing vessel operators must exercise due care in the conduct of fishing activities near submarine cables. Damage to submarine cables resulting from intentional acts or from the failure to exercise due care in the conduct of fishing operations subjects the fishing vessel operator to enforcement action under the International Convention for the Protection of Submarine Cables, and to the criminal penalties prescribed by the Submarine Cable Act (47 U.S.C. 21) and other laws that implement that Convention. Fishing vessel operators also should be aware that the Submarine Cable Act prohibits fishing operations at a distance of less than 1 nautical mile (1.85 km) from a vessel engaged in laying or repairing a submarine cable; or at a distance of less than 0.25 nautical mile (0.46 km) from a buoy or buoys intended to mark the position of a cable when being laid, or when out of order, or broken.

§ 600.515 Interpretation of 16 U.S.C. 1857(4).

Section 307(4) of the Magnuson Act prohibits any fishing vessel other than a vessel of the United States (foreign fishing vessel) from operating in the EEZ if all of the fishing gear on board the vessel is not stowed in compliance with that section ''unless such vessel is authorized to engage in fishing in the area in which the vessel is operating.'' If such a vessel has a permit authorization that is limited to fishing activities other than catching, taking or harvesting (such as support, scouting or processing activities), it must have all of its fishing gear stowed at all times while it is in the EEZ. If such a vessel has a permit authorization to engage in catching, taking or harvesting activities, but such authorization is limited to a specific area within the EEZ, and/or to a specific period of time, the vessel must have all of its fishing gear stowed while it is in the EEZ, except when it is in the specific area authorized, and/or during the specific period of time authorized.

§ 600.516 Total allowable level of foreign fishing (TALFF).

(a) The TALFF, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, is that portion of the OY of such fishery that will not be caught by vessels of the United States.

(b) Each specification of OY and each assessment of the anticipated U.S. harvest will be reviewed during each fishing season. Adjustments to TALFF's will be made based on updated information relating to status of stocks, estimated and actual performance of domestic and foreign fleets, and other relevant factors.

(c) Specifications of OY and the initial estimates of U.S. harvests and TALFF's at the beginning of the relevant fishing year will be published in the Federal Register. Adjustments to those numbers will be published in the Federal Register upon occasion or as directed by regulations implementing FMPs. For current apportionments, contact the appropriate Regional Director or the Director.

§ 600.517 Allocations.

The Secretary of State, in cooperation with the Secretary, determines the allocation among foreign nations of fish species and species groups. The Secretary of State officially notifies each foreign nation of its allocation. The burden of ascertaining and accurately transmitting current allocations and status of harvest of an applicable allocation to fishing vessels is upon the foreign nation and the owner or operator of the FFV.

§ 600.518 Fee schedule for foreign fishing.

(a) *Permit application fees.* Each vessel permit application submitted under § 600.501 must be accompanied by a fee of $354 per vessel, plus the surcharge, if required under paragraph (e) of this section, rounded to the nearest dollar. At the time the application is submitted to the DOS, a check for the fees, drawn on a U.S. bank, made out to ''Department of Commerce, NOAA,'' must be sent to the

Director. The permit fee payment must be accompanied by a list of the vessels for which the payment is made.

(b) *Poundage fees*—(1) *Rates.* If a Nation chooses to accept an allocation, poundage fees must be paid at the rate specified in the following table, plus the surcharge required by paragraph (c) of this section.

TABLE—SPECIES AND POUNDAGE FEES

[Dollars per metric ton, unless otherwise noted]

Species fees	Poundage fees
Northwest Atlantic Ocean fisheries:	
1. Butterfish	274.61
2. Hake, red	163.97
3. Hake, silver	174.63
4. Herring	61.76
5. Mackerel, Atlantic	58.33
6. Other groundfish	119.09
7. Squid, *Illex*	103.98
8. Squid, *Loligo*	245.73

(2) *Method of payment of poundage fees, surcharges and observer fees.* (i) If a Nation chooses to accept an allocation, a revolving letter of credit (L/C) must be established and maintained to cover the poundage fees for at least 25 percent of the previous year's total allocations at the rate in paragraph (b)(1) of this section, or as determined by the Assistant Administrator, plus the surcharges and observer fees required by paragraphs (c) and (d) of this section. The L/C must—

(A) Be irrevocable.

(B) Be with a bank subscribing to ICC Pub. 290.

(C) Designate ''Department of Commerce, NOAA'' as beneficiary;

(D) Allow partial withdrawals.

(E) Be confirmed by a U.S. bank.

(ii) The customer must pay all commissions, transmission, and service charges. No fishing will be allowed until the L/C is established, and authorized written notice of its issuance is provided to the Assistant Administrator.

(3) *Assessment of poundage fees.* Poundage fees will be assessed quarterly for the actual catch during January through March, April through June, July through September, and October through December. The appropriate Regional Director will reconcile catch figures with each country following the procedures of § 600.511(d). When the catch figures are agreed upon, NOAA will present a bill for collection as the documentary demand for payment to the confirming bank. If, after 45 days from the end of the quarter, catches have not been reconciled, the estimate of the Regional Director will stand and a bill will be issued for that amount. If necessary, the catch figures may be refined by the Regional Director during the next 60 days, and any modifications will be reflected in the next quarter's bill.

(c) *Surcharges.* The owner or operator of each foreign vessel who accepts and pays permit application or poundage fees under paragraph (a) or (b) of this section must also pay a surcharge. The Assistant Administrator may reduce or waive the surcharge if it is determined that the Fishing Vessel and Gear Damage Compensation Fund is capitalized sufficiently. The Assistant Administrator also may increase the surcharge during the year to a maximum level of 20 percent, if needed, to maintain capitalization of the fund. The Assistant Administrator has effectively waived the surcharge until further notice.

(d) *Observer fees.* The Assistant Administrator will notify the owners or operators of FFV's of the estimated annual costs of placing observers aboard their vessels. The owners or operators of any such vessel must provide for repayment of those costs by including one-fourth of the estimated annual observer fee as determined by the Assistant Administrator in a L/C as prescribed in § 600.518(b)(2). During the fiscal year, payment will be withdrawn from the L/C as required to cover anticipated observer coverage for the upcoming fishery. The Assistant Administrator will reconcile any differences between the estimated cost and actual costs of observer coverage within 90 days after the end of the fiscal year.

(e) *Financial assurances.* (1) A foreign nation, or the owners and operators of certain vessels of that foreign nation, may be required by the Assistant Administrator to provide financial assurances. Such assurances may be required if—

(i) Civil and criminal penalties assessed against fishing vessels of the Nation have not effectively deterred violations;

(ii) Vessels of that Nation have engaged in fishing in the EEZ without proper authorization to conduct such activities;

(iii) The Nation's vessel owners have refused to answer administrative charges or summons to appear in court; or

(iv) Enforcement of Magnuson Act civil or criminal judgments in the courts of a foreign nation is unattainable.

(2) The level of financial assurances will be guided by the level of penalties assessed and costs to the U.S. Government.

§ 600.520 Northwest Atlantic Ocean fishery.

(a) *Purpose.* Sections 600.520 and 600.525 regulate all foreign fishing conducted under a GIFA within the EEZ in the Atlantic Ocean north of 35°00′ N. lat.

(b) *Authorized fishery*—(1) *Allocations.* Foreign vessels may engage in fishing only in accordance with applicable national allocations.

(2) *Time and area restrictions.* (i) Fishing, including processing, scouting, and support of foreign or U.S. vessels, is prohibited south of 35°00′ N. lat., and north and east of a line beginning at the shore at 44°22′ N. lat., 67°52′ W. long. and intersecting the boundary of the EEZ at 44°11′12″ N. lat., 67°16′46″ W. long.

(ii) The Regional Director will consult with the Council prior to giving notice of any area or time restriction. NMFS will also consult with the USCG if the restriction is proposed to reduce gear conflicts. If NMFS determines after such consultation that the restriction appears to be appropriate, NMFS will publish the proposed restriction in the Federal Register, together with a summary of the information on which the restriction is based. Following a 30-day comment period, NMFS will publish a final action.

(iii) The Regional Director may rescind any restriction if he/she determines that the basis for the restriction no longer exists.

(iv) Any notice of restriction shall operate as a condition imposed on the permit issued to the foreign vessels involved in the fishery.

(3) *TALFF.* The TALFFs for the fisheries of the Northwest Atlantic Ocean are published in the Federal Register. Current TALFFs are also available from the Regional Director.

(4) *Species definitions.* The category ''other finfish'' used in TALFFs and in allocations includes all species except:

(i) The other allocated species, namely: Short-finned squid, long-finned squid, Atlantic herring, Atlantic mackerel, river herring (includes alewife, blueback herring, and hickory shad), and butterfish.

(ii) The prohibited species, namely: American plaice, American shad, Atlantic cod, Atlantic menhaden, Atlantic redfish, Atlantic salmon, all marlin, all spearfish, sailfish, swordfish, black sea bass, bluefish, croaker, haddock, ocean pout, pollock, red hake, scup, sea turtles, sharks (except dogfish), silver hake, spot, striped bass, summer flounder, tilefish, yellowtail

flounder, weakfish, white hake, windowpane flounder, winter flounder, witch flounder, Continental Shelf fishery resources, and other invertebrates (except nonallocated squids).

(5) *Closures*. The taking of any species for which a Nation has an allocation is permitted, provided that:

(i) The vessels of the foreign nation have not caught the allocation of that Nation for any species or species group (e.g., ''other finfish''). When vessels of a foreign nation have caught an applicable allocation of any species, all further fishing other than scouting, processing, or support by vessels of that Nation must cease, even if other allocations have not been reached. Therefore, it is essential that foreign nations plan their fishing strategy to ensure that the reaching of an allocation for one species does not result in the premature closing of a Nation's fishery for other allocated species.

(ii) The fishery has not been closed for other reasons under § 600.511.

(6) *Allocation utilization*. Foreign fishing vessels may elect to retain or discard allocated species; however, the computation of allocation utilization and fee refunds will be based on the total quantity of that species that was caught. Prohibited species must always be returned to the sea as required under § 600.509.

(c) *Fishing areas*. For the purposes of the Northwest Atlantic Ocean fishery, fishing areas are that portion of the EEZ shown inside the boundaries of the ''three digit statistical areas'' described in Figure 1 to this section.

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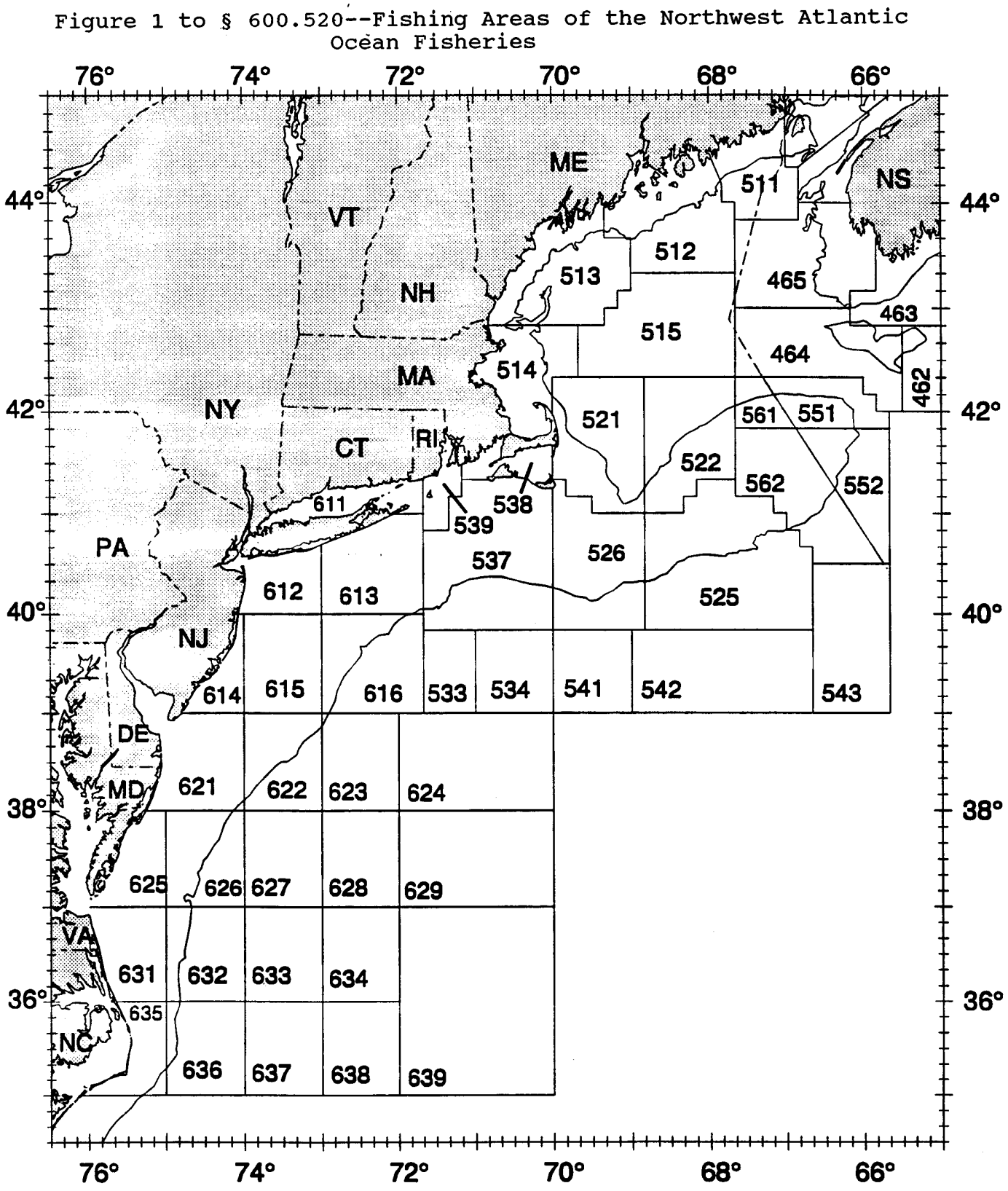
Figure 1 to § 600.520—Fishing Areas of the Northwest Atlantic Ocean Fisheries



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§ 600.525 Atlantic herring fishery.

(a) *Initial specifications.* The initial specifications of OY, DAH, DAP, JVP, TALFF, and reserve (if any) have been established by the PMP for Atlantic herring approved on July 6, 1995. These annual specifications will remain in effect unless adjusted pursuant to the provisions specified in paragraph (b) of this section.

(b) *Procedures to adjust initial specifications.* NMFS may adjust these initial specifications upward or downward to produce the greatest overall benefit to the United States at any time prior to or during the fishing years for which the initial specifications are set by publishing notification in the Federal Register with the reasons for such adjustments. Any notice of adjustment may provide for public comment. Adjustments to the initial specifications may take into account the following information:

(1) The estimated domestic processing capacity and extent to which it will be used.;

(2) Landings and catch statistics.;

(3) Stock assessments.

(4) Relevant scientific information.

Subpart G—Preemption of State Authority Under Section 306(b)

§ 600.605 General policy.

It is the policy of the Secretary that preemption proceedings will be conducted expeditiously. The administrative law judge and counsel or other representative for each party are encouraged to make every effort at each stage of the proceedings to avoid delay.

§ 600.610 Factual findings for Federal preemption.

(a) The two factual findings for Federal preemption of state management authority over a fishery are:

(1) The fishing in a fishery that is covered by an FMP implemented under the Magnuson Act is engaged in predominately within the EEZ and beyond such zone.

(2) A state has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of such FMP.

(b) Whether fishing is engaged in ''predominately'' within or beyond the EEZ will be determined after consideration of relevant factors, including but not limited to, the catch (based on numbers, value, or weight of fish caught, or other relevant factors) or fishing effort during the appropriate period, and in light of historical patterns of the distribution of catch or fishing effort for such stock or stocks of fish.

(c) Whether relevant effects are substantial will be determined after consideration of the magnitude of such actual or potential effects. Relevant to this determination are various factors, including but not limited to, the proportion of the fishery (stock or stocks of fish and fishing for such stocks) that is subject to the effects of a particular state's action or omission, the characteristics and status (including migratory patterns and biological condition) of the stock or stocks of fish in the fishery, and the similarity or dissimilarity between the goals, objectives, or policies of the state's action or omission and the management goals or objectives specified in the FMP for the fishery or between the state and Federal conservation and management measures of the fishery.

§ 600.615 Commencement of proceedings.

(a) *Notice of proposed preemption.* (1) If a proceeding under this part is deemed necessary, the Administrator must issue a notice of proposed preemption to the Attorney General of the State or States concerned. The notice will contain:

(i) A recital of the legal authority and jurisdiction for instituting the proceeding.

(ii) A concise statement of the § 600.610 factual findings for Federal preemption upon which the notice is based.

(iii) The time, place, and date of the hearing.

(2) The notice of proposed preemption will also be published in the Federal Register. This notification may be combined with any notice of proposed rulemaking published under paragraph (d)(1) of this section.

(b) *Response.* The state will have the opportunity to respond in writing to the notice of proposed preemption.

(c) *Amendment.* The Administrator may, at any time prior to the Secretary's decision, withdraw the notice of proposed preemption. Upon motion of either party before the record is closed, the administrative law judge may amend the notice of proposed preemption.

(d) *Proposed regulations*—(1) *In general.* If additional regulations are required to govern fishing within the boundaries of a state, the Administrator may publish proposed regulations in the Federal Register concurrently with issuing the notification indicated in paragraph (a) of this section.

(2) *Emergency actions.* Nothing in this section will prevent the Secretary from taking emergency action under section 305(e) of the Magnuson Act.

§ 600.620 Rules pertaining to the hearing.

(a) The civil procedure rules of the NOAA currently set forth in 15 CFR part 904, subpart C (or as subsequently amended), apply to the proceeding after its commencement by service of notice (pursuant to § 600.615) and prior to the Secretary's decision (§ 600.625), except that the following sections will not apply:

(1) 15 CFR 904.201 (Definitions);

(2) 15 CFR 904.206(a)(1) (Duties and powers of Judge); and

(3) 15 CFR 904.272 (Administrative review of decision).

(b) *Additional duties and powers of judge*—(1) *Time periods.* The administrative law judge is authorized to modify all time periods pertaining to the course of the hearing (under §§ 600.615 and 600.620) to expedite the proceedings, upon application and appropriate showing of need or emergency circumstances by a party.

(2) *Intervention.* Intervention by persons not parties is not allowed.

§ 600.625 Secretary's decision.

(a) The Secretary will, on the basis of the hearing, record the administrative law judge's recommended decision:

(1) Accept or reject any of the findings or conclusions of the administrative law judge and decide whether the factual findings exist for Federal preemption of a state's authority within its boundaries (other than in its internal waters) with respect to the fishery in question;

(2) Reserve decision on the merits or withdraw the notice of proposed preemption; or

(3) Remand the case to the administrative law judge for further proceedings as may be appropriate, along with a statement of reasons for the remand.

(b) *Notification.* (1) If the factual findings for Federal preemption are determined to exist, the Secretary will notify in writing the Attorney General of that state and the appropriate Council(s) of the preemption of that state's authority. The Secretary will also direct the Administrator to promulgate appropriate regulations proposed under § 600.615(d) and otherwise to begin regulating the fishery within the state's boundaries (other than in its internal waters).

(2) If the factual findings for Federal preemption are determined not to exist, the Secretary will notify, in writing, the Attorney General of the state and the appropriate Council(s) of that determination. The Secretary will also direct the Administrator to issue a notice withdrawing any regulations proposed under § 600.615(d).

§ 600.630 Application for reinstatement of state authority.

(a) *Application or notice.* (1) At any time after the promulgation of regulations under § 600.625(b)(1) to regulate a fishery within a state's boundaries, the affected state may apply to the Secretary for reinstatement of state authority. The Secretary may also serve upon such state a notice of intent to terminate such Federal regulation. A state's application must include a clear and concise statement of:

(i) The action taken by the State to correct the action or omission found to have substantially and adversely affected the carrying out of the FMP; or

(ii) Any changed circumstances that affect the relationship of the state's action or omission to take action to the carrying out of the FMP (including any amendment to such plan); and

(iii) Any laws, regulations, or other materials that the state believes support the application.

(2) Any such application received by the Secretary or notice issued to the State will be published in the Federal Register.

(b) *Informal response.* The Secretary has sole discretion to accept or reject the application or response. If the Secretary accepts the application or rejects any responses and finds that the reasons for regulation of the fishery within the boundaries of the state no longer prevail, the Secretary will promptly terminate such regulation and publish in the Federal Register any regulatory amendments necessary to accomplish that end.

(c) *Hearing.* The Secretary has sole discretion to direct the Administrator to schedule hearings for the receipt of evidence by an administrative law judge. Hearings before the administrative law judge to receive such evidence will be conducted in accordance with § 600.620. Upon conclusion of such hearings, the administrative law judge will certify the record and a recommended decision to the Secretary. If the Secretary, upon consideration of the state's application or any response to the notice published under § 600.630(a)(2), the hearing record, the recommended decision, and any other relevant materials finds that the reasons for regulation of the fishery within the boundaries of the state no longer prevail, the Secretary will promptly terminate such regulation and publish in the Federal Register any regulatory amendments necessary to accomplish that end.

Subpart H—General Provisions for Domestic Fisheries

§ 600.705 Relation to other laws.

(a) *General.* Persons affected by these regulations should be aware that other Federal and state statutes and regulations may apply to their activities. Vessel operators may wish to refer to USCG regulations found in the Code of Federal Regulations title 33—Navigation and Navigable Waters and 46—Shipping; 15 CFR part 904, subpart D—Permit Sanctions and Denials; and title 43—Public Lands (in regard to marine sanctuaries).

(b) *State responsibilities.* Certain responsibilities relating to data collection and enforcement may be performed by authorized state personnel under a state/Federal agreement for data collection and a tripartite agreement among the state, the USCG, and the Secretary for enforcement.

(c) *Submarine cables.* Fishing vessel operators must exercise due care in the conduct of fishing activities near submarine cables. Damage to the submarine cables resulting from intentional acts or from the failure to exercise due care in the conduct of fishing operations subjects the fishing vessel operator to the criminal penalties prescribed by the Submarine Cable Act (47 U.S.C. 21) which implements the International Convention for the Protection of Submarine Cables. Fishing vessel operators also should be aware that the Submarine Cable Act prohibits fishing operations at a distance of less than 1 nautical mile (1.85 km) from a vessel engaged in laying or repairing a submarine cable; or at a distance of less than 0.25 nautical mile (0.46 km) from a buoy or buoys intended to mark the position of a cable when being laid or when out of order or broken.

(d) *Marine mammals.* Regulations governing exemption permits and the recordkeeping and reporting of the incidental take of marine mammals are set forth in part 229 of this title.

(e) *Halibut fishing.* Fishing for halibut is governed by regulations of the International Pacific Halibut Commission set forth at part 300 of this title.

(f) *Marine sanctuaries.* All fishing activity, regardless of species sought, is prohibited under 15 CFR part 924 in the U.S.S. Monitor Marine Sanctuary, which is located approximately 15 miles southwest of Cape Hatteras off the coast of North Carolina.

§ 600.710 Permits.

Regulations pertaining to permits required for certain fisheries are set forth in the parts of this chapter governing those fisheries.

§ 600.715 Recordkeeping and reporting.

Regulations pertaining to records and reports required for certain fisheries are set forth in the parts of this chapter governing those fisheries.

§ 600.720 Vessel and gear identification.

Regulations pertaining to special vessel and gear markings required for certain fisheries are set forth in the parts of this chapter governing those fisheries.

§ 600.725 General prohibitions.

It is unlawful for any person to do any of the following:

(a) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land, import, or export, any fish or parts thereof taken or retained in violation of the Magnuson Act or any other statute administered by NOAA and/or any regulation or permit issued under the Magnuson Act.

(b) Transfer or attempt to transfer, directly or indirectly, any U.S.-harvested fish to any foreign fishing vessel, while such vessel is in the EEZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Magnuson Act, which authorizes the receipt by such vessel of U.S.-harvested fish.

(c) Fail to comply immediately with enforcement and boarding procedures specified in § 600.730.

(d) Refuse to allow an authorized officer to board a fishing vessel or to enter areas of custody for purposes of conducting any search, inspection, or seizure in connection with the enforcement of the Magnuson Act or any other statute administered by NOAA.

(e) Dispose of fish or parts thereof or other matter in any manner, after any communication or signal from an authorized officer, or after the approach by an authorized officer or an enforcement vessel or aircraft.

(f) Assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search, inspection, or seizure in connection with enforcement of the Magnuson Act or any other statute administered by NOAA.

(g) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person has committed any act prohibited by the Magnuson Act or any other statute administered by NOAA.

(h) Resist a lawful arrest for any act prohibited under the Magnuson Act or any other statute administered by NOAA.

(i) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, offer of sale, possession, transport, import, export, or transfer of any fish, or attempts to do any of the above.

(j) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act or any other statute administered by NOAA.

(k) Fish in violation of the terms or conditions of any permit or authorization issued under the Magnuson Act or any other statute administered by NOAA.

(l) Fail to report catches as required while fishing pursuant to an exempted fishing permit.

(m) On a scientific research vessel, engage in fishing other than recreational fishing authorized by applicable state or Federal regulations.

(n) Trade, barter, or sell; or attempt to trade, barter, or sell fish possessed or retained while fishing pursuant to an authorization for an exempted educational activity.

(o) Harass or sexually harass an authorized officer or an observer.

(p) It is prohibited to violate any other provision of this part, the Magnuson Act or any other statute administered by NOAA, any notice issued under this part, or any other regulation promulgated under the Magnuson Act or any other statute administered by NOAA.

§ 600.730 Facilitation of enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to parts 625 through 699 of this chapter must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act or any other statute administered by NOAA and this chapter.

(b) *Communications.* (1) Upon being approached by a USCG vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) VHF–FM radiotelephone is the preferred method for communicating between vessels. If the size of the vessel and the wind, sea, and visibility conditions allow, a loudhailer may be used instead of the radio. Hand signals, placards, high frequency radiotelephone, or voice may be employed by an authorized officer, and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. USCG units will normally use the flashing light signal ''L'' as the signal to stop. In the International Code of Signals, ''L'' (.–..) means ''you should stop your vessel instantly.'' (Period (.) means a short flash of light; dash (–) means a long flash of light.)

(4) Failure of a vessel's operator promptly to stop the vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes prima facie evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must:

(1) Guard Channel 16, VHF–FM, if so equipped.

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his/her party to come aboard.

(3) Except for those vessels with a freeboard of 4 ft (1.2 m) or less, provide a safe ladder, if needed, for the authorized officer and his/her party to come aboard.

(4) When necessary to facilitate the boarding or when requested by an authorized officer or observer, provide a manrope or safety line, and illumination for the ladder.

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal ''L'' and the necessity for the vessel to stop instantly. (Period (.) means a short flash of light; dash (-) means a long flash of light.)

(1) ''AA'' repeated (.-.-) is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) ''RY–CY'' (.-. -.— -.-. -.—) means ''you should proceed at slow speed, a boat is coming to you.'' This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) ''SQ3'' (... —.- ...—) means ''you should stop or heave to; I am going to board you.''

§ 600.735 Penalties.

Any person committing, or fishing vessel used in the commission of a violation of the Magnuson Act or any other statute administered by NOAA and/or any regulation issued under the Magnuson Act, is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Magnuson Act, to this section, to 15 CFR part 904 (Civil Procedures), and to other applicable law.

§ 600.740 Enforcement policy.

(a) The Magnuson Act provides four basic enforcement remedies for violations, in ascending order of severity, as follows:

(1) Issuance of a citation (a type of warning), usually at the scene of the offense (see 15 CFR part 904, subpart E).

(2) Assessment by the Administrator of a civil money penalty.

(3) For certain violations, judicial forfeiture action against the vessel and its catch.

(4) Criminal prosecution of the owner or operator for some offenses. It shall be the policy of NMFS to enforce vigorously and equitably the provisions of the Magnuson Act by utilizing that form or combination of authorized remedies best suited in a particular case to this end.

(b) Processing a case under one remedial form usually means that other remedies are inappropriate in that case. However, further investigation or later review may indicate the case to be either more or less serious than initially considered, or may otherwise reveal that the penalty first pursued is inadequate to serve the purposes of the Magnuson Act. Under such circumstances, the Agency may pursue other remedies either in lieu of or in addition to the action originally taken. Forfeiture of the illegal catch does not fall within this general rule and is considered in most cases as only the initial step in

remedying a violation by removing the ill-gotten gains of the offense.

(c) If a fishing vessel for which a permit has been issued under the Magnuson Act is used in the commission of an offense prohibited by section 307 of the Magnuson Act, NOAA may impose permit sanctions, whether or not civil or criminal action has been undertaken against the vessel or its owner or operator. In some cases, the Magnuson Act requires permit sanctions following the assessment of a civil penalty or the imposition of a criminal fine. In sum, the Magnuson Act treats sanctions against the fishing vessel permit to be the carrying out of a purpose separate from that accomplished by civil and criminal penalties against the vessel or its owner or operator.

§ 600.745 Scientific research activity, exempted fishing, and exempted educational activity.

(a) *Scientific research activity.* Nothing in this section is intended to inhibit or prevent any scientific research activity conducted by a scientific research vessel. Persons planning to conduct scientific research activities in the EEZ are encouraged to submit to the appropriate Regional Director, Director, or designee, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific cruise. The Regional Director, Director, or designee will acknowledge notification of scientific research activity by issuing to the operator or master of that vessel, or to the sponsoring institution, a letter of acknowledgment. This letter of acknowledgment is separate and distinct from any permit required by any other applicable law. If the Regional Director, Director, or designee, after review of a research plan, determines that it does not constitute scientific research but rather fishing, the Regional Director, Director, or designee will inform the applicant as soon as practicable and in writing. The Regional Director, Director, or designee may also make recommendations to revise the research plan to make the cruise acceptable as scientific research activity or recommend the applicant request an EFP. In order to facilitate identification of activity as scientific research, persons conducting scientific research activities are advised to carry a copy of the scientific research plan and the letter of acknowledgment on board the scientific research vessel. Activities conducted in accordance with a scientific research plan acknowledged by such a letter are presumed to be scientific research activity. The presumption may be overcome by showing that an activity does not fit the definition of scientific research activity or is outside the scope of the scientific research plan.

(b) *Exempted fishing.*—(1) *General.* A NMFS Regional Director or Director may authorize, for limited testing, public display, data collection, exploratory, health and safety, environmental cleanup, and/or hazard removal purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. Exempted fishing may not be conducted unless authorized by an EFP issued by a Regional Director or Director in accordance with the criteria and procedures specified in this section. The Regional Director or Director may charge a fee to recover the administrative expenses of issuing an EFP. The amount of the fee will be calculated, at least annually, in accordance with procedures of the NOAA Handbook for determining administrative costs of each special product or service; the fee may not exceed such costs. Persons may contact the appropriate Regional Director or Director to find out the applicable fee.

(2) *Application.* An applicant for an EFP shall submit a completed application package to the appropriate Regional Director or Director, as soon as practicable and at least 60 days before the desired effective date of the EFP. Submission of an EFP application less than 60 days before the desired effective date of the EFP may result in a delayed effective date because of review requirements. The application package must include payment of any required fee as specified by paragraph (b)(1) of this section, and a written application that includes, but is not limited to, the following information:

(i) The date of the application.

(ii) The applicant's name, mailing address, and telephone number.

(iii) A statement of the purposes and goals of the exempted fishery for which an EFP is needed, including justification for issuance of the EFP.

(iv) For each vessel to be covered by the EFP, as soon as the information is available and before operations begin under the EFP:

(A) A copy of the USCG documentation, state license, or registration of each vessel, or the information contained on the appropriate document.

(B) The current name, address, and telephone number of the owner and master, if not included on the document provided for the vessel.

(v) The species (target and incidental) expected to be harvested under the EFP, the amount(s) of such harvest necessary to conduct the exempted fishing, the arrangements for disposition of all regulated species harvested under the EFP, and any anticipated impacts on marine mammals or endangered species.

(vi) For each vessel covered by the EFP, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used.

(vii) The signature of the applicant.

(viii) The Regional Director or Director, as appropriate, may request from an applicant additional information necessary to make the determinations required under this section. An incomplete application or an application for which the appropriate fee has not been paid will not be considered until corrected in writing and the fee paid. An applicant for an EFP need not be the owner or operator of the vessel(s) for which the EFP is requested.

(3) *Issuance.* (i) The Regional Director or Director, as appropriate, will review each application and will make a preliminary determination whether the application contains all of the required information and constitutes an activity appropriate for further consideration. If the Regional Director or Director finds that any application does not warrant further consideration, both the applicant and the affected Council(s) will be notified in writing of the reasons for the decision. If the Regional Director or Director determines that any application warrants further consideration, notification of receipt of the application will be published in the Federal Register with a brief description of the proposal, and the intent of NMFS to issue an EFP. Interested persons will be given a 15- to 45-day opportunity to comment and/or comments will be requested during public testimony at a Council meeting. The notification may establish a cut-off date for receipt of additional applications to participate in the same, or a similar, exempted fishing activity. The Regional Director or Director also will forward copies of the application to the Council(s), the USCG, and the appropriate fishery management agencies of affected states, accompanied by the following information:

(A) The effect of the proposed EFP on the target and incidental species, including the effect on any TAC.

(B) A citation of the regulation or regulations that, without the EFP, would prohibit the proposed activity.

(C) Biological information relevant to the proposal, including appropriate statements of environmental impacts, including impacts on marine mammals and threatened or endangered species.

(ii) If the application is complete and warrants additional consultation, the Regional Director or Director may consult with the appropriate Council(s) concerning the permit application during the period in which comments have been requested. The Council(s) or the Director or Regional Director shall notify the applicant in advance of any meeting at which the application will be considered, and offer the applicant the opportunity to appear in support of the application.

(iii) As soon as practicable after receiving responses from the agencies identified in paragraph (b)(3)(i) of this section, and/or after the consultation, if any, described in paragraph (b)(3)(ii) of this section, the Regional Director or Director shall notify the applicant in writing of the decision to grant or deny the EFP, and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(A) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application; or

(B) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect the well-being of the stock of any regulated species of fish, marine mammal, or threatened or endangered species in a significant way; or

(C) Issuance of the EFP would have economic allocation as its sole purpose; or

(D) Activities to be conducted under the EFP would be inconsistent with the intent of this section, the management objectives of the FMP, or other applicable law; or

(E) The applicant has failed to demonstrate a valid justification for the permit; or

(F) The activity proposed under the EFP could create a significant enforcement problem.

(iv) The decision of a Regional Director or Director to grant or deny an EFP is the final action of NMFS. If the permit, as granted, is significantly different from the original application, or is denied, NMFS may publish notification in the Federal Register describing the exempted fishing to be conducted under the EFP or the reasons for denial.

(v) The Regional Director or Director may attach terms and conditions to the EFP consistent with the purpose of the exempted fishing, including, but not limited to:

(A) The maximum amount of each regulated species that can be harvested and landed during the term of the EFP, including trip limitations, where appropriate.

(B) The number, size(s), name(s), and identification number(s) of the vessel(s) authorized to conduct fishing activities under the EFP.

(C) The time(s) and place(s) where exempted fishing may be conducted.

(D) The type, size, and amount of gear that may be used by each vessel operated under the EFP.

(E) The condition that observers, a vessel monitoring system, or other electronic equipment be carried on board vessels operated under an EFP, and any necessary conditions, such as predeployment notification requirements.

(F) Reasonable data reporting requirements.

(G) Other conditions as may be necessary to assure compliance with the purposes of the EFP, consistent with the objectives of the FMP and other applicable law.

(H) Provisions for public release of data obtained under the EFP that are consistent with NOAA confidentiality of statistics procedures at set out in subpart E. An applicant may be required to waive the right to confidentiality of information gathered while conducting exempted fishing as a condition of an EFP.

(4) *Duration.* Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is effective for no longer than 1 year, unless revoked, suspended, or modified. EFPs may be renewed following the application procedures in this section.

(5) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(6) *Transfer.* EFPs issued under this section are not transferable or assignable. An EFP is valid only for the vessel(s) for which it is issued.

(7) *Inspection.* Any EFP issued under this section must be carried on board the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.

(8) *Sanctions.* Failure of a permittee to comply with the terms and conditions of an EFP may be grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP for enforcement purposes will be governed by 15 CFR part 904, subpart D.

(c) *Reports.* (1) Persons conducting scientific research activity are requested to submit a copy of any cruise report or other publication created as a result of the cruise, including the amount, composition, and disposition of their catch, to the appropriate Science and Research Director.

(2) Persons fishing under an EFP are required to report their catches to the appropriate Regional Director or Director, as specified in the EFP.

(d) *Exempted educational activities*—(1) *General.* A NMFS Regional Director or Director may authorize, for educational purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. The decision of a Regional Director or Director to grant or deny an exempted educational activity authorization is the final action of NMFS. Exempted educational activities may not be conducted unless authorized in writing by a Regional Director or Director in accordance with the criteria and procedures specified in this section. Such authorization will be issued without charge.

(2) *Application.* An applicant for an exempted educational activity authorization shall submit to the appropriate Regional Director or Director, at least 15 days before the desired effective date of the authorization, a written application that includes, but is not limited to, the following information:

(i) The date of the application.

(ii) The applicant's name, mailing address, and telephone number.

(iii) A brief statement of the purposes and goals of the exempted educational activity for which authorization is requested, including a general description of the arrangements for disposition of all species collected.

(iv) Evidence that the sponsoring institution is a valid educational institution, such as accreditation by a recognized national or international accreditation body.

(v) The scope and duration of the activity.

(vi) For each vessel to be covered by the authorization:

(A) A copy of the U.S. Coast Guard documentation, state license, or registration of the vessel, or the information contained on the appropriate document.

(B) The current name, address, and telephone number of the owner and master, if not included on the document provided for the vessel.

(vii) The species and amounts expected to be caught during the exempted educational activity.

(viii) For each vessel covered by the authorization, the approximate time(s) and place(s) fishing will take place, and

the type, size, and amount of gear to be used.

(ix) The signature of the applicant.

(x) The Regional Director or Director may request from an applicant additional information necessary to make the determinations required under this section. An incomplete application will not be considered until corrected in writing.

(3) *Issuance.* (i) The Regional Director or Director, as appropriate, will review each application and will make a determination whether the application contains all of the required information, is consistent with the goals, objectives, and requirements of the FMP or regulations and other applicable law, and constitutes a valid exempted educational activity. The applicant will be notified in writing of the decision within 5 working days of receipt of the application.

(ii) The Regional Director or Director may attach terms and conditions to the authorization, consistent with the purpose of the exempted educational activity, including, but not limited to:

(A) The maximum amount of each regulated species that may be harvested.

(B) The time(s) and place(s) where the exempted educational activity may be conducted.

(C) The type, size, and amount of gear that may be used by each vessel operated under the authorization.

(D) Reasonable data reporting requirements.

(E) Such other conditions as may be necessary to assure compliance with the purposes of the authorization, consistent with the objectives of the FMP or regulations.

(F) Provisions for public release of data obtained under the authorization, consistent with NOAA confidentiality of statistics procedures in subpart E. An applicant may be required to waive the right to confidentiality of information gathered while conducting exempted educational activities as a condition of the authorization.

(iii) The authorization will specify the scope of the authorized activity and will include, at a minimum, the duration, vessel(s), species and gear involved in the activity, as well as any additional terms and conditions specified under paragraph (d)(3)(ii) of this section.

(4) *Duration.* Unless otherwise specified, authorization for an exempted educational activity is effective for no longer than 1 year, unless revoked, suspended, or modified. Authorizations may be renewed following the application procedures in this section.

(5) *Alteration.* Any authorization that has been altered, erased, or mutilated is invalid.

(6) *Transfer.* Authorizations issued under this paragraph (d) are not transferable or assignable.

(7) *Inspection.* Any authorization issued under this paragraph (d) must be carried on board the vessel(s) for which it was issued or be in possession of the applicant to which it was issued while the exempted educational activity is being conducted. The authorization must be presented for inspection upon request of any authorized officer. Activities that meet the definition of fishing, despite an educational purpose, are fishing. An authorization may allow covered fishing activities; however, fishing activities conducted outside the scope of an authorization for exempted educational activities are illegal.

PARTS 601, 602, 603, 605, 611, 619, 620, and 621 [REMOVED]

4. Under the authority of 16 U.S.C. 1801 *et seq.*, parts 601, 602, 603, 605, 611, 619, 620, and 621 are removed.

[FR Doc. 96–15767 Filed 6–21–96; 8:45 am]

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Federal Register

Monday
June 24, 1996

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 5, et al.

Federal Acquisition Regulation; Preaward Debriefings; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 13, 14, 15, 19, 25, 33, and 36

[FAR Case 96–304]

RIN 9000–AH13

Federal Acquisition Regulation; Preaward Debriefings

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to implement Section 4104 of the Federal Acquisition Reform Act of 1996. The proposed rule requires that, prior to contract award, contracting officers provide a debriefing to any interested offeror on the reasons for that offeror's exclusion from the competitive range in a competitive negotiation. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before August 23, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 18th and F Streets, NW., Room 4037, Washington, DC 20405.

Please cite FAR case 96–304 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501–1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 96–304.

SUPPLEMENTARY INFORMATION:

A. Background

Section 4104 of the Federal Acquisition Reform Act of 1996 (Public Law 104–106) requires that, prior to contract award, contracting officers provide a debriefing to any interested offeror on the reasons for that offeror's exclusion from the competitive range in a competitive negotiation. The contracting officer may refuse a preaward debriefing request if it is not in the best interests of the government to conduct a debriefing at that time. Section 4104 also requires that the debriefings include the following information: the agency's evaluation of the significant elements in the offeror's proposal; a summary of the rationale for the offeror's exclusion; and reasonable responses to relevant questions posed by the debriefed offeror as to whether the source selection procedures in the solicitation and applicable regulations were followed by the agency.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule provides for earlier debriefings to unsuccessful offerors but does not significantly alter the amount of information provided to unsuccessful offerors. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 96–304), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 5, 13, 14, 15, 19, 25, 33, and 36

Government procurement.

Dated: June 18, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 5, 13, 14, 15, 19, 25, 33 and 36 be amended as set forth below:

1. The authority citation for 48 CFR Parts 5, 13, 14, 15, 19, 25, 33 and 36 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

CHAPTER 1—[AMENDED]

2. In the list below, for each section listed in the left column, remove the citation listed in the middle column, and insert the citation in the last column:

Section	Remove	Insert
5.303(b)(2)	15.1002(c)	15.1003(b)
13.106–1(c)(2)	15.1001(c)(3)	15.1003(b)(2)
15.412(d)	15.1002(c)(1)	15.1003(b)(1)
15.609(c)	15.1002(b)	15.1003
19.302(d)(1)	15.1002(b)(2)	15.1003(a)(2)
19.501(h)(1)	15.1002(b)(2)	15.1003(a)(2)
19.501(h)(2)	15.1002(b)(2)	15.1003(a)(2)
25.405(e)	15.1002	15.1003
33.104(c)(1)	15.1004	15.1006
33.105(d)(1) (intro text)	15.1004	15.1006

PART 14—SEALED BIDDING

3. Section 14.503–1(g) is revised in the second sentence to read as follows:

14.503–1 Step one.

* * * * *

(g) * * * Upon written request, the contracting Officer shall debrief unsuccessful offerors (see 15.1005 and 15.1006.

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

4. Section 15.612(f) is revised to read as follows:

15.612 Formal source selection.

* * * * *

(f) *Notices and debriefings.* See 15.1003, 15.1004, 15.1005, and 15.1006.

5. Subpart 15.10 is revised to read as follows:

Subpart 15.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

Subpart 15.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

15.1001 Definition.

''Day,'' as used in this subpart, means calendar day, except that the period will run until a day which is not a Saturday, Sunday, or legal holiday.

15.1002 Applicability.

This subpart applies to the use of competitive proposals, as described in 6.102(b), and a combination of competitive procedures, as described in 6.102(c). To the extent practicable, however, the procedures and intent of this subpart, with reasonable modification, should be followed for acquisitions described in 6.102(d): broad agency announcements, small business innovation research contracts, and architect-engineer contracts. However, they do not apply to multiple award schedules, as described in 6.102(d)(3).

15.1003 Notifications to unsuccessful offerors.

(a) *Preaward notices.* (1) *Preaward notices of exclusion from competitive range.* The contracting officer shall promptly notify offerors when their proposals are excluded from the competitive range. The notice shall state the basis for the determination and that a proposal revision will not be considered.

(2) *Preaward notices for small business set-asides.* In a small business set-aside (see subpart 19.5), upon completion of negotiations and determinations of responsibility, but prior to award, the contracting officer shall notify each offeror in writing of the name and location of the apparent successful offeror. The notice shall also state that

(i) The Government will not consider subsequent revisions of the offeror's proposal, and

(ii) No response is required unless a basis exists to challenge the small business size status of the apparently successful offeror. The notice is not required when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay.

(b) *Postaward notices.* Within three days after the date of contract award, the contracting officer shall provide written notification to each offeror whose proposal was in the competitive range but not selected for award (Public Law 103–355).

(1) The notice shall include—

(i) The number of offerors solicited;

(ii) The number of proposals received;

(iii) The name and address of each offeror receiving an award;

(iv) The items, quantities, and unit prices of each award (if the number of items or other factors makes listing unit prices impracticable, only the total contract price need be furnished); and

(v) In general terms, the reasons the offeror's proposal was not accepted, unless the price information in paragraph (b)(1)(iv) of this section readily reveals the reason. In no event shall an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

(2) Upon request, the contracting officer shall furnish the information described in paragraphs (b)(1) (i) through (v) of this section to unsuccessful offerors in solicitations using simplified acquisition procedures in part 13.

(3) Upon request, after contract award, the contracting officer shall provide the information in paragraphs (b)(1) (i) through (v) of this section to unsuccessful offerors who received a preaward notice of exclusion from the competitive range.

15.1004 Notification to successful offeror.

The contracting officer shall award a contract with reasonable promptness to the successful offeror (selected in accordance with 15.611(d)) by transmitting written notice of the award to that offeror (but see 15.608(b)). When an award is made to an offeror for less than all of the items that may be awarded to that offeror and additional items are being withheld for subsequent award, each notice shall state that the Government may make subsequent awards on those additional items within the offer acceptance period.

15.1005 Preaward debriefing of offerors.

Offerors excluded from the competitive range may request a debriefing before award (10 U.S.C. 2305(b)(6)(A) and 41 U.S.C. 253b(f)–(h)). The process for preaward debriefings follows:

(a) The offeror may request a preaward debriefing by submitting a written request for debriefing to the contracting officer within three days after the receipt of notice of exclusion from the competitive range. If the offeror does not submit a timely request, the offeror need not be given either a preaward or a postaward debriefing. Offerors are entitled to no more than one debriefing for each proposal.

(b) The contracting officer should provide a debriefing to the offeror as soon as practical. If providing a preaward debriefing is not in the best interest of the Government at the time it is requested, the contracting officer may delay the debriefing, but shall provide the debriefing no later than the time postaward debriefings are provided under 15.1006. In that event, the contracting officer shall include the information at 15.1006(d) in the debriefing.

(c) Debriefings may be done orally, in writing, or by any other method acceptable to the contracting officer.

(d) The contracting officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support. If the contracting officer is unavailable, another agency representative may be designated by the contracting officer on a case-by-case basis, if approved by an individual at a level above the contracting officer.

(e) At a minimum, preaward debriefings shall include—

(1) The agency's evaluation of significant elements in the offeror's proposal;

(2) A summary of the rationale for excluding the offeror from the competitive range; and

(3) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed in the process of excluding the offeror from the competitive range.

(f) Preaward debriefings shall not disclose—

(1) The number of offerors;

(2) The identify of other offerors;

(3) The content of other offeror's proposals;

(4) The ranking of other offerors;

(5) The evaluation of other offerors; or

(6) Any of the information prohibited in 15.1006(e).

(g) The contracting officer shall include an official summary of the debriefing in the contract file.

15.1006 Postaward debriefing of offerors.

(a) An offeror, upon its written request received by the agency within three days after the date on which that offeror has received notice of contract award, shall be debriefed and furnished the basis for the selection decision and contract award. An offeror who failed to submit a timely request under 15.1005(a) is not entitled to a debriefing. When practicable, debriefing requests received more than three days after the offeror receives notice of contract award may be accommodated. However, accommodating untimely debriefing requests does not extend the time within which suspension of performance can be required because this accommodation is not a ''required debriefing'' as described in FAR part 33. To the maximum extent practicable, the debriefing should occur within five days after receipt of the written request.

(b) Debriefings of successful and unsuccessful offerors may be done orally, in writing, or by any other method acceptable to the contracting officer.

(c) The contracting officer should normally chair any debriefing session held. Individuals who conducted the evaluation shall provide support. If the contracting officer is unavailable, another agency representative may be designated by the contracting officer on a case-by-case basis, with the approval of an individual a level above the contracting officer.

(d) At a minimum, the debriefing information shall include—

(1) The Government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable;

(2) The overall evaluated cost or price and technical rating, if applicable, of the successful offeror and the debriefed offeror;

(3) The overall ranking of all offerors when any ranking was developed by the agency during the source selection;

(4) A summary of the rationale for award;

(5) For acquisitions of commercial end items, the make and model of the item to be delivered by the successful offeror; and

(6) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

(e) The debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors. Moreover, the debriefing shall not reveal any information exempt from release under the Freedom of Information Act including—

(1) Trade secrets;

(2) Privileged or confidential manufacturing processes and techniques;

(3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and

(4) The names of individuals providing reference information about an offeror's past performance.

(f) The contracting officer shall include an official summary of the debriefing in the contract file.

15.1007 Protests against award.

(a) Protests against award in negotiated acquisitions shall be treated substantially the same as in sealed bidding (see subpart 33.1). Use of agency protest procedures which incorporate the alternative dispute resolution provisions of Executive Order 12979 is encouraged for both preaward and postaward protests.

(b) If, within one year of contract award, a protest causes the agency to issue either a new solicitation or a new request for best and final offers on the protested contract award, the agency shall make available to prospective offerors or original offerors still within the competitive range, respectively—

(1) Information provided in any debriefings conducted on the original award about the successful offeror's proposal; and

(2) Other nonproprietary information that would have been provided to the original offerors.

15.1008 Discovery of mistakes.

For treatment of mistakes in an offeror's proposal that are discovered before award, see 15.607. Mistakes in a contractor's proposal that are disclosed after award shall be processed in accordance with 14.407–4.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

6. Section 36.607(b) is revised to read as follows:

36.607 Release of information on firm selection.

* * * * *

(b) Debriefings of successful and unsuccessful firms will be held after final selection has taken place and will be conducted, to the extent practicable, in accordance with 15.1004 and 15.1006 (b) through (g). Note that 15.1006(d) (2) through (d)(5) does not apply to architect-engineer contracts.

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Federal Register

Monday
June 24, 1996

Part V

Department of Energy

48 CFR Part 917, et al.

Management and Operating Contracts; Interim Final Rule and Proposed Rule

DEPARTMENT OF ENERGY

48 CFR Parts 917 and 970

[1991–AB–09]

Acquisition Regulation; Department of Energy Management and Operating Contracts

AGENCY: Department of Energy.

ACTION: Interim final rule with request for comment.

SUMMARY: The Department of Energy (DOE) today publishes an interim rulemaking to set forth its policy regarding the competition and extension of the Department's management and operating contracts. Under its policy, the Department affirms its commitment to provide for full and open competition in the award of its management and operating contracts, except where the Department determines that competitive procedures should not be used pursuant to one of the circumstances authorized by the Competition in Contracting Act of 1984 (41 U.S.C. 254), as implemented in Part 6 of the Federal Acquisition Regulation. This rulemaking implements one of the key recommendations of the Department's contract reform initiative to improve its acquisition system.

DATES: This interim rule is effective August 23, 1996. Written comments should be forwarded no later than August 23, 1996.

ADDRESSES: Comments should be submitted to Connie P. Fournier, Office of Policy (HR–51), Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585; (202) 586–0545 (facsimile); connie.fournier@hq.doe.gov (Internet).

The administrative record regarding this rulemaking that is on file for public inspection is located in the Department's Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Connie P. Fournier at (202) 586–8245.

SUPPLEMENTARY INFORMATION:

I. Background

The Department's contracts for the management and operation of its facilities have historically been subject to specialized rules pertaining to their periodic extension. Under these rules, contained at Department of Energy Acquisition Regulation (DEAR) 970.0001 and 917.6, existing policy favored non-competitive extensions of incumbent contractors. Competition was permitted only when it appeared likely that the Government's position might be meaningfully improved in terms of cost or performance and only then when it was determined that to change a contractor would not be contrary to the best interest of the Government. This resulted in noncompetition as the preferential norm.

The Department's Contract Reform Report, *Making Contracting Work Better and Cost Less* (February 1994), in recommending a number of changes, called for a reversal of this policy. Accordingly, the Department published Acquisition Letter 94–14 in the Federal Register (59 FR 50733), October 5, 1994, as an interim policy setting forth guidelines for the competition or extension of the Department's management and operating contracts. The interim policy established competition as the preferential norm. Exceptions to competition were to be made on a case-by-case basis, only in exceptional circumstances, and only when authorized by the Head of the Agency. The intent was to balance the positive effects of a competitive environment with the recognition that long-term contractual relationships can facilitate superior contractor performance, especially given the highly complex and multi-faceted work performed under management and operating contracts. The Department has competed, or is competing, a number of management and operating contracts in accordance with this interim policy.

After considering the comments received in response to the interim policy, as set forth in Acquisition Letter 94–14, and its experience under that policy, the Department has concluded that certain aspects of the Acquisition Letter are appropriate for regulation, as modified for consistency with applicable law. Other aspects of the Acquisition Letter will be incorporated into nonregulatory internal Department guidance. Under the rulemaking published today, the Department affirms its commitment to full and open competition as the norm for its management and operating contracts. Exceptions to the use of full and open competition will be made on a case-by-case basis: (1) only in accordance with the circumstances authorized by the Competition in Contracting Act of 1984 (CICA) and Part 6 of the Federal Acquisition Regulation (FAR), and (2) only when authorized by the Head of the Agency. Adherence to the existing statutory requirements of CICA, as implemented in FAR Part 6, preserves a preference for competition; conforms the Department's decisionmaking process to noncompetitively award contracts with Federal-wide standards found in statute and regulation; and eliminates unnecessary, agency-specific regulations. Today's interim rule supersedes both the Department's regulation that created a noncompetitive norm and Acquisition Letter 94–14.

A notice of proposed rulemaking published elsewhere in this issue of the Federal Register discusses changes proposed to the Department of Energy Acquisition Regulation to implement other contract reform recommendations. A third rulemaking that discusses the Department's fee policies for profit making and nonprofit management and operating contractors will be promulgated as a separate proposal. Together, these three rulemakings constitute the Department's regulatory implementation of certain key contract reform initiatives in its acquisition regulation.

II. Section-by-Section Analysis

A detailed list of changes in the interim rule follows.

1. *917.602,* Policy. This section is added to prescribe the Department's policy to provide for full and open competition and the use of competitive procedures in the award of management and operating contracts, except as authorized by law and the Head of the Agency.

2. *917.605,* Award, renewal, and extension. This section is amended to remove the existing coverage at 917.605(b) that prescribes the Department's internal processing and documentation requirements for extend/compete decisions. This nonregulatory subject matter will be reflected in internal Department guidance. A new section 917.605(d) is added to provide for the conditional approval of any noncompetitive extension (other than an extension accomplished by the exercise of an option) subject to the successful achievement of the Government's negotiation objectives. This section also permits adequate time to compete the contract in the event that the negotiations cannot be successfully concluded.

3. *970.0001,* Renewal of management and operating contracts. This section is

amended to delete the Department's previous policy that competition generally would be used only when it appeared likely that the Government's position might be meaningfully improved in terms of cost or performance, unless it was determined that to change a contractor would be contrary to the best interest of the Government. This section is removed and reserved for future use.

4. *970.17,* Special Contracting Methods. This subpart is added to provide for coverage concerning contract term and options to extend management and operating contracts.

5. *970.1702–1,* Contract term and option to extend. This section is added to provide policy guidance on (1) the total period of performance permitted under a management and operating contract and (2) the requirements governing the exercise of an option to extend the term of an existing contract. Paragraph (a) of the section states that management and operating contracts may provide for a base period of up to 5 years and may include an option to extend the period of performance for up to an additional total of 5 years. The purpose of permitting the inclusion of an option to extend the term of the contract is to facilitate long-term contractual relationships where the mission of the Department is best served by such an extension and to reward contractors for superior performance under the contract.

Regarding the exercise of options under paragraph (b), the contracting officer may exercise an option to extend a competitively awarded contract only after assessing certain factors, including the contractor's past performance. The decision of the contracting officer must be approved by the Head of the Contracting Activity and the cognizant Assistant Secretary(s).

6. *970.1701–2,* Solicitation provision and contract clause. This section is added to provide instruction to the contracting officer on the application of the solicitation provision and contract clause pertaining to the use of options in management and operating contracts.

7. *970.5204–73,* Notice regarding option. This section is added to subpart 970.52, Contract clauses for management and operating contracts, to provide a solicitation provision for options to extend the term of the contract.

8. *970.5204–74,* Option to extend the term of the contract. This section is added to subpart 970.52, Contract clauses for management and operating contracts, to provide a contract clause for options to extend the term of the contract.

III. Procedural Requirements

A. Review Under Executive Order 12866

This regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review, under that Executive Order, by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect , if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the interim final regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This rule is not subject to review under the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, because it is not subject to a legal requirement to publish a general notice of proposed rulemaking.

D. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this rule. Accordingly, no Office of Management and Budget clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

E. Review Under Executive Order 12612

Executive Order 12612, entitled ''Federalism,'' 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. The Department has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR 1500–1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*). Pursuant to Appendix A of Subpart D of 10 CFR 1021, National Environmental Policy Act Implementing Procedures (Categorical Exclusion A6), the Department has determined that this rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

IV. Public Comments

A. Written Comments

Although the interim regulations published in this rule are not substantive regulations with the kind of impact that warrants prior notice, the Department is nevertheless providing an opportunity for public comment. Interested persons are invited to participate by submitting data, views, or arguments with respect to the DEAR amendments set forth in this rule. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this rule. In addition, it is requested that you provide a copy of your comments on a

WordPerfect 6.1 or ASCII diskette. Comments may be sent to the Internet address in the **ADDRESSES** section of this rule instead of the written copies and diskette, provided they are transmitted in a WordPerfect 6.1 compatible format and include the name, title, organization, postal address, and Internet address with the text of the comments. All comments received will be available for public inspection in the Department of Energy Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received on or before the date specified in the beginning of this rule and all other relevant information will be considered by the Department before taking final action. Comments received after that date will be considered to the extent that time allows. Any person submitting information which that person believes to be confidential and which may be exempt from public disclosure should submit one complete copy, as well as an additional copy from which the information claimed to be confidential has been deleted. The Department reserves the right to determine the confidential status of the information or data and to treat it according to its determination. The Department's generally applicable procedures for handling information which has been submitted in a document and may be exempt from public disclosure are set forth in 10 CFR 1004.11.

B. Public Hearing Determination

The Department has concluded that this rule does not involve any significant issues of law or fact. Therefore, consistent with 5 U.S.C. 553, the Department has not scheduled a public hearing. However, a public hearing will be held on the notice of proposed rulemaking published elsewhere in this issue of the Federal Register on other contract reform changes proposed to the Department of Energy Acquisition Regulation. Any person who has an interest in those proposed contract reform changes may request an opportunity to make an oral presentation in accordance with the procedures described in that rulemaking.

List of Subjects in 48 CFR Parts 917 and 970

Government procurement.

Issued in Washington, D.C., on June 7, 1996.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below:

PART 917—SPECIAL CONTRACTING METHODS

1. The authority citation for Part 917 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. Subpart 917.6, Management and Operating Contracts, is amended to add new section 917.602, Policy, to read as follows:

917.602 Policy.

(a) It is the policy of the Department of Energy to provide for full and open competition in the award of management and operating contracts, including performance-based management contracts.

(b) A management and operating contract may be awarded or extended at the completion of its term without providing for full and open competition only when such award or extension is justified under one of the statutory authorities identified in FAR 6.302 and only when authorized by the Head of the Agency. Documentation and processing requirements for justifications for the use of other that full and open competition shall be accomplished in accordance with internal agency procedures.

3. Section 917.605 is revised to read as follows:

917.605 Award, renewal, and extension.

Conditional Authorization of Non-competitive Extension Made Pursuant to Authority Under CICA. Authorization to extend by the Head of the Agency shall be considered conditional upon the successful negotiation of the contract to be extended in accordance with the Department's negotiation objectives. The Head of the Contracting Activity shall advise the Procurement Executive no later than 6 months after receipt of the conditional authorization as to whether the Department's objectives will be met and, if not, the contracting activity's plans for competing the requirement.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

4. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254).

970.0001 [Removed and reserved]

5. Section 970.0001 is removed and reserved.

6. Subpart 970.17, Special contracting methods, is added to read as follows:

970.1702–1 Term of contract and option to extend.

(a) *Contract term.* Effective work performance under a management and operating contract is facilitated by the use of a relatively long contract term of up to ten (10) years. Accordingly, management and operating contracts shall provide for a basic contract term not to exceed five (5) years and may include an option(s) to extend the term for additional periods; provided, that no one option period exceeds five (5) years in duration and the total term of the contract, including any options exercised, does not exceed ten (10) years. The specific term of the base period and of any options periods shall be determined at the time of the authorization to compete or extend the contract. The term ''option'' as used herein means a unilateral right in the contract by which the Government can extend the term of the contract. Accordingly, except as may be provided for through the inclusion of an option(s) in the contract to extend the term, any extension to continue the contract with the incumbent contractor beyond its term shall only occur when such extension can be justified under one of the statutory authorities identified in FAR 6.302 and when authorized by the Head of the Agency.

(b) *Exercise of option.* As part of the review required by FAR 17.605(b), the contracting officer shall assess whether competing the contract will produce a more advantageous offer than exercising the option. The incumbent contractor's past performance under the contract, the extent to which performance-based management contract provisions are present, or can be negotiated into, the contract, and the impact of a change in a contractor on the Department's discharge of its programs are considerations that shall be addressed in the contracting officer's decision that the exercise of the option is in the Government's best interest. The contracting officer's decision shall be approved by the Procurement Executive and the cognizant Assistant Secretary(s).

970.1702–2 Solicitation provision and contract clause.

(a) The contracting officer shall insert a provision substantially the same as the provision at 48 CFR (DEAR) 970.5204–73, Notice Regarding Options, in solicitations when the inclusion of an option to extend the term of the contract has been authorized.

(b) The contracting officer shall insert the clause at 48 CFR (DEAR) 970.5204–74, Option to extend the term of the contract, when the inclusion of an option to extend the term of the contract has been authorized.

7. Subpart 970.52 is amended by adding sections 970.5204–73, Notice regarding options, and 970.5204–74, Option to extend the term of the contract, to read as follows:

970.5204–73 Notice regarding options.

As prescribed in 48 CFR (DEAR) 970.1702–2(a), insert the following provision:

Notice Regarding Options (June 1996)

The contract resulting from this solicitation is expected to include one or more options to extend the term of the contract. Exercise of any option to extend the term of contract will be at the unilateral right of the Department of Energy. The contractor's performance under the basic contract, including any previously exercised options, will be among the significant considerations in the Department's decision to exercise any option.

970.5204–74 Option to extend the term of the contract.

As prescribed in 48 CFR (DEAR) 970.1702–2(b), insert the following clause:

Option to Extend the Term of The Contract (June 1996)

(a) The Department of Energy may unilaterally extend the term of this performance-based management contract by written notice to the contractor within [Insert the period of time in which the contracting officer has to exercise the option]; provided, that the Department of Energy shall give the contractor a preliminary written notice of its intent to extend at least twelve (12) months before the basic term of the contract expires. The preliminary notice does not commit the Department of Energy to an extension.

(b) The option(s) to extend the contract is identified in [Specify section of contract and clause number and name] of the contract. The Department of Energy may exercise any, or all, of the options identified in the contract. The total duration of this contract, including the exercise of any option(s) under this clause, shall not exceed 120 months.

[FR Doc. 96–15366 Filed 6–21–96; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

48 CFR Parts 917, 950, 952, and 970

[1991–AB–28]

Acquisition Regulation; Department of Energy Management and Operating Contracts

AGENCY: Department of Energy.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Department of Energy (DOE) proposes to amend the Department of Energy Acquisition Regulation (DEAR) to implement certain key recommendations of its Department-wide contract reform initiative. Changes are proposed in the following areas: performance-based management contracting; fines, penalties, third-party liability, and property liability; requirements for contractor make or buy plans; payment of fee; procedures for determining the application of laws, regulations, and Department directives to contractors; environment; ownership of records; and overtime management.

DATES: Written comments should be forwarded no later than August 23, 1996. A public hearing will be held on August 1, 1996, beginning at 9:30 a.m. local time at the address listed below. Requests to speak at the hearing should be received by 4:30 p.m. local time on July 18, 1996. Later requests will be accommodated to the extent practicable.

ADDRESSES: All comments, as well as requests to speak at the public hearing, are to be submitted to Connie P. Fournier, Office of Policy (HR–51), Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–8245; (202) 586–0545 (facsimile); connie.fournier@hq.doe.gov (Internet).

The public hearing will be held at the U.S. Department of Energy, Main Auditorium, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

The administrative record regarding this rulemaking that is on file for public inspection, including a copy of the transcript of the public hearing and any additional public comments received, is located in the Department's Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Connie P. Fournier, Office of Policy (HR–51), Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–8245.

SUPPLEMENTARY INFORMATION:

I. Background

In February 1994, the Department of Energy issued the report of its Contract Reform Team, *Making Contracting Work Better and Cost Less*, which recommended a number of changes to improve the Department's acquisition system, principally in areas affecting management and operating contracts. The Department has since developed and tested various policies, practices, and procedures to implement the report's recommendations. Today's proposed rule would include those new policies and changes to existing policies in the Department's acquisition regulation needed to strengthen the management of management and operating contracts.

DOE today also publishes a notice of interim final rulemaking that discusses changes to the Department's policies regarding competition and extension of its management and operating contracts. A third rulemaking that discusses the Department's fee policies for profit making and nonprofit management and operating contractors will be promulgated as a separate proposal. Together, these three rulemakings constitute the Department's regulatory implementation of certain key contract reform initiatives in its acquisition regulation.

II. Section-by-Section Analysis

The proposed rule would amend the following sections of the DEAR, as discussed below. For convenience, this section-by-section analysis is grouped by the major items covered. Proposed text changes are listed at the end of each major item discussed.

Item I—Performance-based Management Contracting

The Contract Reform Report recommended Performance Based Management Contracts, a new form of management and operating contract, which use performance-based contracting concepts to better define measurable standards of performance under which the Department evaluated and appropriately rewarded contractors. That recommendation was based, in part, on the policies established by the Office of Federal Procurement Policy (OFPP) Policy Letter 91–2, entitled ''Service Contracting.'' That Policy Letter, issued in April 1991, establishes performance-based contracting as a strategy for acquiring services, with the objectives of improving quality and ensuring that the Government only pays for services actually received. These objectives are met through contracting methodologies that use performance-based, results-oriented statements of work in conjunction with measurable performance indicators to assess quality, evaluation and selection factors that employ quality related factors, performance incentives, and greater use of fixed pricing arrangements. Although the OFPP Policy Letter applies to service contracts under Part 37 of the Federal Acquisition Regulation, the concepts and methodologies of performance-based service contracting have application in the Department's contracts for the management and operation of its sites and facilities. Accordingly, the Department considered the policies established under the OFPP Policy Letter in developing policies for its performance-based management and operating contracts and adopted its key features and methodologies. The Department intends to review its proposed coverage with the upcoming proposed coverage in FAR Part 37 implementing the OFPP Policy Letter to ensure consistency with Government-wide policies. The key to the Department's efforts is the development of specific, objective criteria for performance as well as identification of specific measures to determine if the contractor met the expectations established in the contract. Accordingly, today's proposed rule would define performance-based management contracts and would require that specific criteria for performance and measures of that performance be included in the contract.

The following changes are proposed:

1. *917.600*, Scope of subpart. This section would be revised to recognize the applicability of the requirements of the subpart to performance-based management contracts.

2. *917.601*, Definitions. This section would be added to define the term ''performance-based management contract'' as a form of management and operating contract to be used by the Department of Energy for the management and operation of its weapons production and laboratory facilities, where the contract includes objective performance standards and incentives. This term, first identified in

the Contract Reform Report, would be recognized as the embodiment of the Department's commitment and policy to employ performance-based contracting methodologies in contracting for the management and operation of its sites and facilities.

3. *970.10,* Specifications, standards and other statement of work descriptions. Section 970.1001 is proposed to be revised as a new section on Performance-based statements of work, criteria, and measures, and section 970.1002 is proposed to be retitled, Additional considerations.

Item II—Fines, Penalties, Third-party Liability, and Property Liability

The Contract Reform Report indicated that the Department's contracting policy must focus on payment for results and not simply payment for incurred costs. An early attempt, in January 1990, to be more outcome-oriented and encourage the contractor to more efficiently manage risk resulted in the ''accountability rule.'' This revision to the Department's cost reimbursement policies, published as a final rule (56 FR 28099) on June 19, 1991, made profit making management and operating contractors liable for certain costs, known as ''avoidable costs,'' which resulted from the negligence of the contractor's or subcontractor's employees.

Based on practical experience with this policy, the Department is proposing to maintain the concept of transferring certain risk to the contractor in order to incentivize good business management but to change the approach to minimize the costs associated with the administration of the accountability rule. Therefore, this notice of proposed rulemaking would revise the current reimbursement rules in the DEAR regarding avoidable costs by eliminating the provisions of the accountability rule contained in DEAR Part 970 and introducing a new policy on cost reimbursement and liability. With regard to property, the Department also proposes to have the contractor compensate the Government for Government property losses and damage under certain circumstances.

A. Comments on Sample Contract Provisions for Profit-Making Contractors Related to Liability Provisions

The Department announced in the *Commerce Business Daily* on February 13, 1995, the availability of draft sample contract provisions which contained, among other things, contract clauses relating to the reimbursement of costs for fines, penalties, third party liabilities, and damage to, or loss of, government property. These contract clauses have also been subjected to numerous, less formal reviews by stakeholders and other interested parties both within and outside of the Department in the months preceding and following the announcement of the availability of the draft sample contract. The contract clauses proposed today governing the Department's treatment of costs for fines, penalties, third party liabilities, and damage to, or loss of, government property reflect the Department's consideration of comments, concerns, and observations raised by stakeholders during these developmental efforts.

B. Burden of Proof Shifted for Fines and Penalties, Third-Party Liability, and Damage to or Loss of Government Property

A key change in today's notice of proposed rulemaking would be the adoption of a rebuttable presumption of unallowability standard for fines and penalties, third-party liability, and damage to or loss of government property. This standard, which would affect a number of contract clauses governing the Department's management and operating contracts, would shift the burden of proof for establishing the reasonableness and allowability of these costs from the Government to the contractor. An underlying premise in promulgating this change in policy is the belief that the contractor has in its possession the information necessary to determine how and why these costs are incurred and, therefore, is better able to establish the facts and other information needed to support a decision of allowability. Accordingly, under this proposed rule, the contractor would have to make an affirmative showing to the contracting officer that such costs should be allowable.

The Department believes that the proposals set forth in this proposed rule concerning the presumption of allowability and burden of proof for fines and penalties, third-party liability, and damage to or loss of government property are appropriate to the Department's management and operating contracts. In addition, the Department believes that the changes are supported by current policies, legal precedent, and legislative reform efforts in this area. For example, under a previous rulemaking published by the Federal Acquisition Regulation Council, Federal Acquisition Regulation 31.201–3 was amended to change the Government allowability standard and shift the burden of proof from the Government to the contractor once the contracting officer challenged the allowability of a cost (see 52 FR 19800, May 27, 1987). Further, Section 2151(f)(2) of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355), entitled, Allowable Contract Costs, provides that the Federal Acquisition Regulation shall require a contracting officer not to resolve any questioned costs until adequate documentation has been obtained from the contractor with respect to the questioned costs.

C. Prudent Business Judgment

This proposed rule contains amendments to DEAR 970.3101–3, General basis for reimbursement of costs, and the general allowability paragraph (paragraph (c)) of DEAR 970.5204–13 and 970.5204–14. Under these amendments, the Department would rely on FAR 31.201–3, Determining Reasonableness, as the basis for determining cost reasonableness. Under FAR 31.201–3, a cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. This standard would be used in conjunction with other factors stated in the affected provisions and contract clauses to determine cost allowability and reimbursement.

This guidance would also be applied in determining whether the contractor has met its burden to demonstrate that its managerial personnel did not fail to exercise prudent business judgment under the facts and circumstances leading to the incurrence of the cost.

In applying this new standard, the contracting officer would consider the totality of the circumstances and the exercise of skill and judgment by the contractor's management in his/her review and determination on a particular cost's reasonableness. Included in the contracting officer's review of each set of circumstances would be an analysis of the contractor's management practices with respect to lower level employees, including whether management has failed to act on repeated misconduct by lower level employees or has failed to institute on a systematic basis sufficient controls or mechanisms to prevent deficient behavior or performance.

D. Fines and Penalties.

The current DEAR policy on fines and penalties, DEAR 970.3102–21, contains amendments from the accountability rule and provides different treatment for profit making contractors and nonprofit contractors. This proposed rule would amend this policy and the allowable cost provisions to make fines and

penalties unallowable unless the contractor demonstrates to the contracting officer that they were incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer.

The proposed rule additionally provides that the contracting officer would have authority to reimburse the contractor where the fine or penalty was imposed without regard to whether the contractor was at fault or exercised due care, and the fine or penalty could not have been avoided by the exercise of due care by the contractor or its employees. The Department recognizes concerns on the part of contractors regarding potential liabilities arising from activities occurring on a Department of Energy-owned site before the contractor assumed responsibility for that site and, for this reason, the Department is proposing a new clause, DEAR 970.5204–XX—Preexisting Conditions.

E. Litigation and Losses From Third-Party Liabilities.

This proposed rule would amend certain contract clauses to provide that third-party liabilities would not be allowable unless the contractor demonstrates that they did not result from (1) willful misconduct or lack of good faith by the contractor's managerial personnel, or (2) failure to exercise prudent business judgment by the contractor's managerial personnel. Under the proposed rule, the new clause, Insurance—Litigation and Claims, would provide guidance on the reimbursement of insurance covering third-party claims, litigation involving third-party claims, treatment of punitive damages under a third-party claim, and the burden of proof carried by the contractor in seeking reimbursement of its costs. The proposed revision to the Litigation and Claims clause would also revise the Department's guidance on non-third-party litigation, such as litigation by other governmental entities. The new clause would, in no way, impact or affect the Department's obligation to provide nuclear hazards indemnity pursuant to the Price-Anderson Act (42 U.S.C. Section 2210(d)).

On the issue of reimbursement of contractor insurance costs, the Department proposes that contracting officers should be given authority to pro-rate the cost of premiums incurred by contractors to exclude the unallowable portion but still cover the portion of the premium allowable under the contract's terms.

Finally, the Department proposes to revise the allowable cost provisions in DEAR 970.5204–13 and 970.5204–14 to clearly provide that litigation expenses would only be allowable if incurred in accordance with Department-approved contractor litigation management procedures, including cost guidelines.

F. Qui Tam Actions.

A new paragraph (h) would be added to DEAR 970.5204–61, Cost Prohibitions Related to Legal and Other Proceedings, to address the treatment of costs incurred in proceedings involving a *qui tam* action under the False Claims Act, 31 U.S.C. 3730, alleging fraud against the Government, which are not otherwise covered by the existing provisions of that clause.

G. Environmentally-Related Third-Party Liabilities Incurred by Contractors Performing Response Action Work.

The Department has reviewed a number of issues, including the types of environmental cleanup problems confronted by the Department and its contractors, the potential third-party liabilities at the Department's sites, and the availability of reasonably priced commercial pollution liability insurance for sites potentially contaminated with radioactive waste. A determination has been made that the same provision proposed in this notice of proposed rulemaking for general third-party liabilities should be proposed for environmentally-related third-party liabilities incurred by contractors performing response action work.

H. Damage to or Loss of Government Property.

A similar standard of liability is proposed in DEAR 970.5204–21 for damage to or loss of government property as for third-party liabilities. The proposed rule provides that costs resulting from damage to government property would not be allowable unless the contractor demonstrates to the contracting officer that they did not result from: (1) willful misconduct or lack of good faith on the part of the contractor's managerial personnel; or (2) failure of the contractor to comply with any appropriate written direction of the contracting officer to safeguard such property; or (3) failure of the contractor to establish, maintain or administer an approved property management system. Further, the contractor may be responsible for and required to compensate the Government for loss, destruction, or damage to Government property.

I. Effect of Proposed Rule on Nonprofit Contractors.

Until now, the Department's accountability provisions have not applied to nonprofit contractors. This proposed rule would apply the same rules to nonprofit as profit-making contractors. Through this approach, the Department is expressing its desire that all its contractors, regardless of business status, must bear responsibility for employing good business practices and must mitigate risks associated with potential liabilities. In proposing this change, some minor distinctions, such as for the definition of managerial personnel in the Insurance—Litigation and Claims clause, would be recognized for nonprofit contractors. This definition is necessarily different since nonprofit contractors usually have a different organizational structure and different work responsibilities than profit-making contractors. The Department particularly seeks comment on this part of the proposal.

J. Effect of Proposed Rule on Accountability Rule.

This proposed rule would revise the provisions of the accountability rule relating to cost reimbursement policies and clauses contained in DEAR Part 970.

The following changes are proposed:

1. *950.7101,* General contract authority indemnity. Paragraph (c)(2) would be removed.

2. *970.28,* would be amended to add a new section 970.2830, Contract clause, which would prescribe the use of the clause at 970.5204–31, Insurance—Litigation and Claims.

3. *970.3101–3,* General basis for reimbursement of costs. Subparagraph (a)(1) would be amended to add a reference to FAR 31.201–3.

4. *970.3102–21,* Fines and penalties. This subsection would be revised.

5. *970.3102–22,* Avoidable Costs for Profit Making Contractors. This subsection would be removed.

6. *970.3103,* Contract Clauses. Paragraph (d) would be added.

7. *970.5204–13.* Subparagraph (c)(1) would be amended to refer to FAR 31.201–3.

8. *970.5204–13(d)(4).* This paragraph would be amended to add references to Department of Energy-approved contractor litigation management procedures and cost guidelines to be included in an Appendix to the contract.

9. *970.5204–13(d)(9).* This paragraph would be amended to add ''and as allowable under subparagraph (f) of the clause of this contract entitled, Property.''

10. *970.5204–13(e)(12).* This paragraph concerning fines and penalties for profit making and nonprofit contractors would be revised.

11. *970.5204–13(e)(17).* This paragraph would be reorganized and revised.

12. *970.5204–13(e)(36).* This paragraph would be revised to remove most of the discussion; the statement that the cost of insurance for an unallowable cost is an unallowable cost would be retained.

13. *970.5204–14.* Subparagraph (c)(1) would be amended to add a reference to FAR 31.201–3.

14. *970.5204–14(d)(4).* This paragraph would be amended to add references to Department of Energy-approved contractor litigation management procedures and cost guidelines to be included in an Appendix to the contract.

15. *970.5204–14(d)(10).* This paragraph would be amended to add ''and as allowable under subparagraph (f) of the clause of this contract entitled Property.''

16. *970.5204–14(e)(10).* This paragraph concerning fines and penalties for profit making and nonprofit contractors would be revised.

17. *970.5204–14(e)(15).* This paragraph would be reorganized and revised.

18. *970.5204–14(e)(34).* This paragraph would be revised to remove most of the discussion; only the statement that the cost of insurance for an unallowable cost is an unallowable cost would be retained.

19. *970.5204–18,* Definition of nonprofit and profit making management and operating contractors and subcontractors. This subsection would be removed and reserved.

20. *970.5204–21,* Property. Paragraphs (e), (f), (g), (i) and (j) would be revised; the definition of contractor's managerial personnel which previously appeared at the end of paragraph (f) would appear as paragraph (j).

21. *970.5204–31,* Litigation and claims. This subsection would be removed and a new subsection, Insurance—Litigation and Claims, would be added in its place.

22. *970.5204–32,* Required bond and insurance-exclusive of Government property. This subsection would be removed and reserved.

23. *970.5204–55,* Ceiling on certain liabilities for profit making contractors. This subsection would be removed and reserved.

24. *970.5204–56,* Determining avoidable costs. This subsection would be removed and reserved.

25. *970.5204–61,* Cost prohibitions related to legal and other proceedings. This subsection would be amended to add a new paragraph (h).

26. *970.5204–XX,* Preexisting Conditions. This subsection would be added.

Item III—Make-or-buy Decisions

The Department of Energy expects its management and operating contractors to operate the Department's laboratories, weapons production plants, and other facilities in a cost-effective and efficient manner. In addition to maximizing the productivity of existing operations, contractors are expected to critically analyze all of the functions performed at a facility to identify the most efficient and cost effective manner in which these functions may be performed, with an emphasis on subcontracting. Accordingly, the Department proposes that contracts for the management and operation of the Department's facilities require the contractor to prepare and administer a master make-or-buy plan consistent with the Department's expectations.

Because subcontracting decisions by a management and operating contractor can result in the displacement of workers in, or a restructuring of, the current work force, the Department would expect its contractors to assess subcontracting opportunities and implement subcontracting decisions in a manner which (1) promotes open communications early in and throughout the planning process between and among the parties affected by such subcontracting decisions and (2) mitigates the social and economic impacts of subcontracting decisions, consistent with the Department's commitments and responsibilities under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (42 U.S.C. 7274h). The policy proposed today addresses the application, submission, review, and acceptance of make-or-buy plans under management and operating contracts, including considerations relating to subcontracting activities which result in the displacement of the existing contractor work force.

The following changes are proposed:

1. *970.1507,* Make-or-Buy Plans. A new section would be added to Subpart 970.15, Contracting by Negotiation, consisting of Subsection 970.1507–2, Requirements, and Subsection 970.1507–3, Contract Clause. Subsection 970.1507–1, Policy, would provide the basic policy of the Department that its management and operating contractors operate the facility or site on a least-cost basis. Subsection 970.1507–2, Requirements, would provide broad guidance on key elements of the make-or-buy plan submission, approval and evaluation process. Subsection 970.1507–3, Contract Clauses, would provide the contracting officer with guidance on the application of the clauses to be included in contracts.

2. *970.5204–XX,* Make-or-Buy Plan. A new subsection would be added to provide a contract clause to be used in management and operating contracts governing the submission and approval of contractor make-or-buy plans, and changes to the approved make-or-buy plan.

3. *970.5204–XX,* Displaced Employee Hiring Preference. A new subsection would be added to provide a contract clause to be used in management and operating contracts describing hiring preferences for certain employees affected by the downsizing of a Department of Energy defense nuclear facility.

Item IV—Payment of Fee

With regard to the Government's payment of fixed-fee, base fee, and award fee under a management and operating contract, the clause at DEAR 970.5204–16, Payments and Advances, would be revised to give the contracting officer the option to either pay fee through draw downs against the special financial institution account or by direct payment. Prior written approval of the contracting officer for fee payment to be withdrawn against the letter-of-credit is also proposed. This would allow the Department the latitude to make fee payments in the most cost effective manner; i.e., draw downs, but retain the option to pay fee by direct payment if circumstance so warrant. Additionally, language would be added allowing the contracting officer to offset against any such fee payment the amounts owed to the Government by the contractor, including any amounts owed for disallowed costs under the contract.

The following change is proposed:

970.5204–16, Payments and advances. This subsection would be revised to permit the contracting officer to either pay fee through draw downs against special financial institution accounts or by direct payment. In addition, contracting officer approval is proposed for fee payment to be withdrawn against a letter of credit.

Item V—Laws, Regulations, and DOE Directives

The Department is proposing a revised DEAR clause entitled, Laws, Regulations, and DOE Directives, as part of its contract reform efforts. The proposed clause would standardize the

manner in which applicable requirements are included in its management and operating contracts.

Paragraph (a) would provide that the contractor is obligated to comply with applicable Federal, State, and local laws and regulations, unless relief has been granted in writing by the appropriate regulatory agency. In addition, this paragraph would provide that a List of Applicable Laws and Regulations identifying all applicable Federal, state, and local laws and regulations may be appended to the contract, but the contractor would not be excused from compliance with applicable laws and regulations in the event the Department omitted a law or regulation from the List. Paragraph (b) would provide for the inclusion of a List of Applicable Directives containing a listing of DOE directives, or parts thereof, applicable to a particular contract on the effective date of the contract, and as discussed below, would explain the mechanism to be used by the Department to revise the List. This List might include Department orders and other written requirements such as Department of Energy Notices.

Development of both lists would be aided by efforts to tailor Department requirements on environment, safety, and health to the unique circumstances at particular facilities. The Office of Defense Programs and Office of Environmental Management have established the Standards/Requirements Program to identify adequate environmental, safety, and health protection standards and requirements for selected facilities and activities and to assess the status of implementation of those standards/requirements. The environment, safety, and health requirements for Department sites, facilities, and activities would be documented in Standards/Requirements Identification Documents (SRIDs).

Building on experience with the SRIDs process, the Department Standards Committee has developed a generic process, called the Necessary and Sufficient Process, to identify an appropriate set of standards for a particular facility or activity that would ensure adequate protection of workers, the public, and the environment.

If the Standards/Requirements identification process or the Necessary and Sufficient Process has been concluded before a contract is executed, the resulting SRID or Necessary and Sufficient set of standards should be used as the basis for developing the lists of environment, safety, and health requirements.

Paragraph (b) would provide that when the contracting officer decides to revise the List of Applicable Directives in any way, the contractor is given the opportunity to assess and advise the contracting officer of the potential impact of such revision. Revisions to the List of Applicable Directives would be made in accordance with the Changes clause of the contract.

If the SRID or Necessary and Sufficient set of standards is developed and approved after execution of the contract, it would be incorporated into the contract pursuant to proposed paragraph (c), and would substitute for environment, safety, and health requirements identified on the pre-existing List of Applicable Directives, as appropriate, for the work activities subject to the approved SRID or Necessary and Sufficient set of standards.

As background for those wishing to comment on this proposed clause, information on the SRID development process and the Necessary and Sufficient process is available in the Department's Freedom of Information Act Reading Room, where public information for this notice of proposed rulemaking is available.

Information and background on the SRID development process may be found in the Department of Energy Implementation Plan in response to the Defense Nuclear Facilities Safety Board Recommendation 90–2 (Revision 5; November 1994), and in Standards/Requirements Identification Document Development and Approval Instruction (September 1994). The Necessary and Sufficient Closure Process is described in Department of Energy Closure Process for Necessary and Sufficient Set of Standards (M450.3–1, January 25, 1996).

The following changes are proposed:

1. *970.04,* Administrative Matters. A new section 970.0470, Department of Energy Directives, would be added, describing the Department of Energy directives system.

2. *970.5204–XX,* Laws, Regulations, and DOE Directives. A new subsection would be added to provide a clause to identify directives and related requirements applicable to a specific contract.

Item VI—Environment

DEAR 970.5204–2 and the clause therein would be retitled to add ''Environment'' to their titles, reflecting the broadening of the clause to add this subject related to safety and health. The revised clause would call for compliance with applicable laws and regulations and, in conjunction with the clause on Departmental directives discussed elsewhere in this proposed rule, identify more specifically the Department of Energy directives with which a contractor is to comply than does the existing clause at DEAR 970.5204–2. The clause would change from 30 days to 60 days the period by which an Environment, Safety, and Health (ES&H) Management Plan is to be submitted, provide for the Plan to be periodically updated, and make changes to the Plan subject to the Government-approved change control process applicable to the contract. Successful application of the clause would require that: 1) Department of Energy Operations Office Managers establish contractor expectations for ES&H performance prior to the program execution year; 2) contractors develop an ES&H Management Plan that describes the management and program activities that would be conducted to meet those expectations and that the contractor would commit to undertake; 3) Department of Energy Operations Office Manager approve the Plan; and 4) ES&H performance measures flow from the Plan, target major risk management issues, and tie explicitly to incentives and fees. The ''stop work'' provisions of the clause would be revised to enhance their clarity. Guidance for the flowdown of environment, safety, and health requirements in subcontracts to be performed on-site would be provided. Also, paragraph (d) would be added requiring the submission and approval of an Authorization Agreement for certain facilities and/or site operations as determined by the contracting officer. Authorization Agreements might be used to establish, document, and control the safety requirements and other parameters for specified operations. Paragraph (d) would also require that: 1) contracting officers may at any time notify the contractor that specified operations may require an Authorization Agreement; 2) specified operations may proceed only subject to the requirements of a Department of Energy-approved Authorization Agreement; and 3) updates and changes to an Authorization Agreement shall be subject to Department of Energy approval. Authorization Agreements would be subject to the same ''stop work'' and fee and awards payment criteria established for the ES&H Management Plan. This paragraph is intended to be responsive to the Defense Nuclear Facilities Safety Board (DNFSB) Recommendation 95–2 regarding integrated safety management. Additional changes to contract language may be required as a result of the Department's implementation plan for DNFSB Recommendation 95–2.

Alternate clause paragraph (b) would provide for the use of an alternate version of the clause in contracts that do not incorporate clauses referenced in the basic Environment, Safety and Health clause.

Several clauses dealing with environment, safety, or health would be consolidated for the sake of simplification and overall consistency. Three clauses proposed, DEAR 970.5204–2, Environment, Safety, and Health; DEAR 970.5204–XX, Ownership of Records; and DEAR 970.5204–XX, Laws, Regulations, and DOE Directives, would incorporate requirements from four existing clauses the Department proposes to remove from its regulation: DEAR 970.5204–2, Safety and Health; DEAR 970.5204–26, Nuclear Facility Safety; DEAR 970.5204–41, Preservation of Individual Occupational Radiation Exposure Records; and DEAR 970.5204–62, Environmental Protection. For instance, the provisions in the Safety and Health clause would be consolidated in DEAR 970.5204–2, Environment, Safety, and Health. The Department proposes to remove the Nuclear Facility Safety clause, since most of the provisions of the Nuclear Facility Safety clause are, or will be, incorporated in other Departmental rulemakings (see 10 CFR Parts 830, 834, and 835). These other Departmental rulemakings will also be available for public comment as they are developed. Removal of the Nuclear Facility Safety clause would be contingent upon the final promulgation of Part 830. The Department proposes to remove the clause entitled, Preservation of Individual Occupational Radiation Exposure Records, and place the substance of the clause in DEAR 970.5204–XX, Ownership of Records. It is also noted that the removed clause's requirements would be encompassed within 10 CFR Part 835. The Department proposes to remove DEAR 970.5204–62, Environmental Protection, because the list of applicable laws, regulations, and directives cited therein would be included in the contract pursuant to proposed paragraph (a) of DEAR 970.5204–XX, Laws, Regulations, and DOE Directives. The language, ''assist the DOE in complying'' contained in paragraph (b) of 970.5204–62, would be added to DEAR 970.5204–2, Environment, safety, and health.

The following changes are proposed:

1. *952.223–71,* Safety and health. This subsection would be clarified so that it is consistent with 970.5204–2, Safety and Health, for non-management and operating contracts.

2. *970.2303–2,* Clauses. Paragraphs (c), (d), and (e), prescribing clauses at 970.5204–26, 970.5204–41, and 970.5204–62, respectively, would be removed, since these clauses would also be removed.

3. *970.5204–2,* Safety and health. Environmental requirements would be added to those for safety and health in this clause.

4. *970.5204–26,* Nuclear facility safety. This clause would be removed.

5. *970.5204–41.* Preservation of individual occupational radiation exposure records. This clause would be removed.

6. *970.5204–62,* Environmental protection. This clause would be removed.

Item VII—Ownership of Records

The Ownership of Records clause proposed today sets forth the government's ownership of, and control over, those records the creation or acquisition of which by the contractor was paid for by the government. This clause would preserve the government's access and copying rights to such records during the contract term and ensure continuity at sites by giving the Department the records upon termination or completion of the contract. Additionally, consistent with the Department's implementing requirements (59 FR 63882, December 12, 1994) for the Freedom of Information Act (FOIA), the ownership provision in paragraph (a) of the clause would grant public access to contractor-generated or acquired records, subject only to the two specified exceptions in the FOIA rule (privileged and commercially valuable information) and to the statutory exemptions in the Freedom of Information Act.

Generally, all records generated or acquired by the contractor in connection with work performed under management and operating contracts have been considered the property of the Government. Conversely, the Department recognizes that under this principle, a contractor may request that the Department restrict its rights with respect to documents for which the contractor would not seek reimbursement from the Department under the contract. Nonetheless, over time, contractors have requested that certain, limited categories of records be the property of the contractors. The Department proposes that some of these categories may be appropriate for contractor ownership, subject to the Department's rights of audit, inspection, and copying.

The proposed clause, therefore, would ensure that the Department's right to obtain and determine the disposition of contractor-owned documents be maintained. For instance, the Department must have access to contractor medical and personnel records when the Department has determined that such access is necessary to enable the Department to carry out its public health and safety responsibilities under existing law. The Department has made such determinations in the area of health-related research, including epidemiological research performed by the Department or other public health agencies, and in connection with the Department's evaluation of a contractor's performance of environment, safety, and health requirements. In the past, government access to records on individuals has been restricted to protect the privacy interests of the individuals, based on state law. The clause recognizes, however, that federal law preempts state law in this area, and that in any event, the government's use of such records would be consistent with applicable federal laws, including the Privacy Act.

The categories of records proposed in this clause as eligible for contractor ownership, in paragraph (b), are intended to be restricted to only those contained in the clause. Paragraph (c) of the clause would delineate the Department's rights to obtain the documents; the Department anticipates that certain of these documents would be routinely provided to the Department under the contract.

The following changes are proposed:

1. *970.0407,* Alternate retention schedules. This section would be redesignated 970.0407–1.

2. *970.0407–2,* Ownership of records. This subsection would be added to explain the circumstances in which contractor ownership of certain records may be identified in a management and operating contract.

3. *970.5204–XX,* Ownership of records. A clause would be added to identify government-owned records; contractor-owned records; the government's rights to inspection, copying, use, and audit of records; and records retention requirements under the contract.

Item VIII—Management and Operating Contract Overtime Practices

The Contract Reform Report identified weaknesses in the Department's management of contractor overtime costs. While acknowledging that overtime can save money compared to not doing the job at all or hiring new permanent workers, it can also be abused. In order to better manage these resources and to ensure that management and operating contractors

balance the efficient use of human resources and the need to adequately compensate its work force with effective cost control of overtime, the Department is proposing an approach for assuring overtime costs are reasonable. Individual contractor overtime practices exceeding specified criteria would trigger a requirement for the contractor to develop an overtime control plan, with the contractor establishing specific controls for the use and evaluation of overtime. The Department proposes to require the plan, on an annual basis, if one of the following criteria are met: (1) the contractor exceeds the Department's management and operating contract median overtime usage plus 2%; or (2) the contractor's overtime usage as a percentage of payroll exceeds the DOE contractor median and the contractor's policy permits payment of overtime premiums for exempt employees earning equal to or greater than $45,000 per annum; or (3) the contractor's overtime usage as a percentage of payroll exceeds the DOE contractor median and the contractor permits overtime payments on any basis other than hours worked in excess of 40 hours per week. In 1994, the median overtime experienced by the Department's management and operating contractors was 3.09% of base payroll expenditures; in 1993, it was 3.16%.

The following changes are proposed:

1. *970.2275.* A new section, Overtime management, would be added.

2. *970.2275–1.* A new subsection would be added to describe the criteria under which a management and operating contract may incur overtime without further management controls. Management and operating contractors that exceed these overtime criteria would be required to develop and comply with a plan to report and control overtime.

3. *970.2275–2.* A new subsection would be added to give the prescription for use of an overtime management clause.

4. *970.5204–XX.* A new clause on overtime management would be added.

III. Procedural Requirements

A. Review Under Executive Order 12866

This regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review, under that Executive Order, by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department of Energy has completed the required review and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.,* which requires preparation of a regulatory flexibility analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities. This proposed rule is intended to provide policies for the Department of Energy's management and operating contractors, who are all large businesses. There are three clauses proposed which identify flowdown requirements to subcontractors, some of whom may be small businesses. (1) The clause at 970.5204–2, Environment, Safety, and Health, would provide for the flowdown of ''appropriate requirements'' to subcontractors performing work on-site at a Department-owned or -leased facility. (2) The clause at 970.5204–XX, Laws, Regulations, and DOE Directives, would provide for subcontract compliance with ''necessary provisions'' as determined by the prime contractor. (3) The clause at 970.5204–XX, Ownership of Records, would specify requirements for certain subcontractors meeting specific thresholds. The first two clauses do not impose a significant economic impact since nearly all of the prime and subcontracts have been cost reimbursement contracts. The third clause has considered the needs of small business in establishing thresholds above which requirements must be met. The Department anticipates that most small businesses will not meet these threshold requirements for compliance. Based on this review, the Department certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this proposed rule. Accordingly, no Office of Management and Budget clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

E. Review Under Executive Order 12612

Executive Order 12612, entitled ''Federalism,'' 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. The Department has determined that this proposed rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR 1500–1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*). Pursuant to Appendix A of Subpart D of 10 CFR 1021, National Environmental

Policy Act Implementing Procedures (Categorical Exclusion A6), the Department has determined that this proposed rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

IV. Opportunities for Public Comment

A. Written Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to the DEAR amendments set forth in this proposed rule. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section. Comments on the major items identified in this proposed rule should be identified on separate pages, with the name of the item at the top of each page. In addition, it is requested that you provide a copy of your comments on a WordPerfect 6.1 or ASCII diskette. Comments may be sent to the Internet address in the **ADDRESSES** section of this proposed rule instead of the written copies and diskette, provided they are transmitted in a WordPerfect 6.1 compatible format and include the name, title, organization, postal address, and Internet address with the text of the comments. All comments received will be available for public inspection in the Department of Energy Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received on or before the date specified in the beginning of this proposed rule and all other relevant information will be considered by the Department before taking final action. Comments received after that date will be considered to the extent that time allows. Any person submitting information which that person believes to be confidential and which may be exempt from public disclosure should submit one complete copy, as well as an additional copy from which the information claimed to be confidential has been deleted. The Department reserves the right to determine the confidential status of the information or data and to treat it according to its determination. The Department's generally applicable procedures for handling information which has been submitted in a document and may be exempt from public disclosure are set forth in 10 CFR 1004.11.

B. Public Hearing

1. Request to Speak Procedures

A public hearing on the proposed rule will be held at 9:30 a.m. on August 1, 1996, in the Main Auditorium of the Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585. Oral presentations on both this proposed rule and the proposed rule on fees for management and operating contractors published elsewhere in this Federal Register will be heard at that time.

Any person who has an interest in the proposed rule or who is a representative of a group or class of persons who has an interest in the proposed rule may request an opportunity to make an oral presentation. A request to speak at the public hearing should be addressed to the address indicated at the beginning of this proposed rule. The person making the request should briefly describe his or her interest in the proceedings and, if appropriate, state why the person is a proper representative of a group. The person should also provide a telephone number where he or she may be reached during the day. Two copies of the speaker's statement should be brought to the hearing. In the event any person wishing to testify cannot meet this requirement, alternative arrangement can be made in advance.

2. Conduct of the Hearing

DOE reserves the right to select persons to be heard at the hearing, to schedule their respective presentations, and to establish procedures governing the conduct of the hearing. To ensure that all persons wishing to make a presentation can be heard, each speaker will be limited to 10 minutes to present comments on this proposed rule. Speakers who wish to provide further information for the record should submit such information in writing.

A Department of Energy official will preside at the hearing. This will not be a judicial or evidentiary hearing. It will be conducted in accordance with 5 U.S.C. 553 and section 501 of the Department of Energy Organization Act, 42 U.S.C. 7191.

Questions may be asked only by those conducting the hearing. Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer. DOE reserves the right to change the location, date, and procedures for this hearing. If DOE must cancel the public hearing, DOE will make every effort to publish an advance notice of such cancellation in the Federal Register. Actual notice of cancellation will also be given to all persons scheduled to speak. The hearing date may be canceled in the even no member of the public requests the opportunity to make an oral presentation.

A transcript of the hearing will be made by DOE and made available as part of the administrative record for this rulemaking. It will be on file for inspection at the DOE Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the hearing reporter.

List of Subjects in 48 CFR Parts 917, 950, 952, 970

Government procurement.

Issued in Washington, D.C., on June 7, 1996.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set forth in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 917—SPECIAL CONTRACTING METHODS

1. The authority citation for Part 917 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. Section 917.600 is amended by adding the following sentences at the end of the paragraph:

917.600 Scope of subpart.

* * * The requirements of this subpart apply to any Department of Energy management and operating contract, including performance-based management contracts as defined in 48 CFR (DEAR) 917.601. References in this subpart to ''management and operating contracts'' shall be understood to include performance-based management contracts.

3. Subpart 917.6, Management and Operating Contracts, is amended to add new section 917.601, Definitions, to read as follows:

917.601 Definitions.

Performance-based management contract means a management and operating contract that employs, to the maximum extent practicable, performance-based contracting concepts and methodologies through the application of results-oriented statements of work; clear, objective performance standards and measurement tools; and incentives to

encourage superior contractor performance.

PART 950—EXTRAORDINARY CONTRACTUAL ACTIONS

4. The authority citation for Part 950 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

950.7101 [Amended]

5. Section 950.7101 is amended by removing paragraph (c)(2) and redesignating paragraph (c)(1) as (c).

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. The authority citation for Part 952 is revised to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

7. Section 952.223–71 is amended by revising the section heading and adding the following sentence at the end of the paragraph to read as follows:

952.223–71 Environment, safety and health.

* * * Replace clause paragraph (b) with the following:

(b) The contractor shall comply with applicable Federal, State, and local environmental, safety, and health laws and regulations, and with DOE directives identified in writing by the contracting officer. The contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over environmental, safety, and health matters under this contract.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

8. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254).

970.0407 [Removed]

9. Section 970.0407, Records retention requirements, is removed.

10. New subsection 970.0407–1, Alternate retention schedules, is added to read as follows:

970.0407–1 Alternate retention schedules.

Records produced under the Department's contracts involving management and operation responsibilities relative to DOE-owned or -leased facilities are to be retained and disposed of in accordance with the requirements of DOE Order 1324.5 rather than those set forth at subpart 4.4 of the Federal Acquisition Regulation.

11. New section 970.0407–2, Ownership of records, is added to read as follows:

970.0407–2 Ownership of records.

Contracting officers may agree to contractor ownership of the categories of records designated in the instruction in paragraph (b) of 48 CFR (DEAR) 970.5204–XX, Ownership of Records, so long as such agreements do not limit the Government's right to inspect, copy, and audit these records. Right of inspection, copying, and audit must be maintained in order to protect the public interest and meet the Department's statutory reporting requirements.

12. New section 970.0470–3, Contract clause, is added to read as follows:

970.0470–3 Contract clause.

The contracting officer shall insert the clause at 48 CFR (DEAR) 970.5204–XX, Ownership of records, in management and operating contracts where the contractor wishes to retain ownership of certain records. Contracts containing the clause at 48 CFR (DEAR) 970.5204–XX, Ownership of Records, shall also include the clauses at 48 CFR (DEAR) 970.5203–2, Inspection of records by the Comptroller General, and 48 CFR (DEAR) 970.5204–9, Accounts, records and inspection.

13. New section 970.0470, Department of Energy Directives, consisting of subsections 970.0470–1 and 970.0470–2, is added to read as follows:

970.0470 Department of Energy Directives.
970.0470–1 General.
970.0470–2 Contract clause.

970.0470–1 General.

(a) The Department of Energy Directives system is the system of instructions, including orders, notices, manuals, guides, and standards, for Departmental elements. In certain circumstances, requirements contained in these directives may apply to a contractor through operation of a contract clause. Program and requirements personnel are responsible for identifying requirements applicable to a contract, developing the list, and providing the list to the contracting officer for inclusion in the contract.

(b) If the contract relates to facilities or activities that have been the subject of a completed review using the Standards/Requirements Identification process or the Necessary and Sufficient process, the environment, safety, and health portion of the list should be developed using the approved Standards/Requirements Identification Document or Necessary and Sufficient set of standards. If the Standards/Requirements Identification process or the Necessary and Sufficient process is completed with regard to facilities or activities covered by the contract after the contract is executed, the approved Standards/Requirements Identification Document or Necessary and Sufficient set of standards should be used in developing the environment, safety, and health portion of the list, as appropriate.

970.0470–2 Contract clause.

The contracting officer shall insert the clause at DEAR 970.5204–XX, Laws, Regulations, DOE Directives, in management and operating contracts.

14. Section 970.1001 is revised to read as follows:

970.1001 Performance-based statements of work, criteria, and measures.

(a) It is the policy of the Department of Energy to use, to the maximum extent practicable, performance-based contracting in its management and operating contracts. The use of performance-based statements of work, where feasible, is the preferred method for establishing work requirements. Statements of work, work authorizations, and other documents describing contractor work activity should describe performance requirements and expectations in terms of outcome, results, or final work products, as opposed to methods, processes, design, or broad statements or categories of work activity.

(b) Performance criteria, measures, and incentives shall be structured to correspond to the performance requirements established in the statement of work, work authorization, or other such document.

970.1002 [Amended]

15. The section heading for section 970.1002 is revised to read, ''Additional considerations.''

16. Subpart 970.15 is amended by adding new section 970.1507, Make-or-Buy Plans, consisting of 970.1507–1, 970.1507–2, and 970.1507–3, to read as follows:

970.1507 Make-or-buy Plans
970.1507–1 Policy.
970.1507–2 Requirements.
970.1507–3 Contract clauses.

970.1507–1 Policy.

(a) Contracting officers shall require management and operating contractors to develop and implement make-or-buy plans that establish a preference for providing property or services (including construction and construction management) on a least-cost basis, subject to program specific make-or-buy criteria. The emphasis of this make-or-buy structure is to

eliminate bias for in-house performance where an activity may be performed at less cost or otherwise more efficiently through subcontracting.

(b) In developing and implementing its make-or-buy plan, a contractor shall be required to assess subcontracting opportunities and implement subcontracting decisions in accordance with the following:

(1) The contractor shall actively support internal productivity improvement and cost-reduction programs so that in-house performance options can be made more efficient and cost-effective.

(2) The contractor shall consider subcontracting opportunities with the maximum practicable regard for open communications with potentially affected employees and their representatives. Similarly, contractors will openly discuss their plans, activities, cost-benefit analyses, and decisions with the many stakeholders affected by such decisions, including representatives of the community and local businesses.

(3) Consistent with Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (42 U.S.C. 7274h), the contractor shall mitigate the social and economic impacts of subcontracting decisions, including work force displacement or restructuring, to the extent practicable. Mitigation shall include the requirement for hiring preferences in a subcontract (see 48 CFR (DEAR) 970.5204–XX, Displaced Employee Hiring Preference). Potential work force displacement may require the Department of Energy to prepare a work force restructuring plan. The contractor shall implement the plan, which may require the following initiatives for eligible workers consistent with the objectives of Section 3161: retraining, early retirement or other options to avoid lay-offs; retraining for new missions; outplacement assistance, including tuition reimbursement; relocation assistance; and 60 days individual layoff notice.

970.1507–2 Requirements.

(a) *Development of program-specific make-or-buy criteria.* DOE programmatic sponsors of the work conducted at the facility or site shall develop program specific make-or-buy criteria. Program specific make-or-buy criteria are those factors that reflect specific mission or program objectives (including operational efficiency, contractor diversity, environment, safety and health, work force displacement and restructuring, and collective bargaining agreements) and that, upon their application to a specific work effort, would obviate a decision based on a purely economic (i.e., least-cost) rationale. These criteria are to be used to assess each work effort identified in a facility's or site's make-or-buy plan to determine the appropriateness of a contractor's make-or-buy decisions. Program specific make-or-buy criteria shall be provided to the contractor for use in developing a master make-or-buy plan for the facility, site, or specific program, as appropriate.

(b) *Make-or-buy plan property and services.* Property or services estimated to cost less than one (1) percent of the estimated total operating cost for a year or $1 million for the same year, whichever is less, generally should not be included in the contractor's make-or-buy plan. However, adjustments may be made to these thresholds where programmatic or cost considerations would indicate that a particular supply or service should be included in the master plan.

(c) *Submission of make-or-buy plans.* The contracting officer shall require the contractor to submit an initial plan and all plan updates for DOE approval. For newly awarded contracts, the contracting officer shall require the contractor to submit to the contracting officer the master make-or-buy plan for approval not later than 180 days after contract award. Where existing contracts are to be renewed with the incumbent contractor, the contracting officer shall require the contractor to submit a master make-or-buy plan during the negotiation of the contract extension. The contracting officer shall modify existing contracts that have a remaining term of at least two (2) years to include a requirement for a contractor make-or-buy plan. Evaluation and approval of such a plan should occur as part of the annual work plan/budget negotiations. Once approved, make-or-buy plans shall remain effective for the term of the contract (up to a period of five years), unless circumstances warrant a change. The contracting officer shall require the contractor to update the plan whenever changed circumstances occur or significant new work not identified or contemplated at the time of approval of the initial plan is initiated.

(d) *Evaluation of the contractor's make-or-buy plan.* In evaluating the contractor's make-or-buy plan, the contracting officer shall consider the following factors:

(1) The program specific make-or-buy criteria with particular attention to the effect of a ''buy'' decision on the contractor's ability to maintain core competencies needed to operate the site or facility;

(2) The impact of a ''make'' or ''buy'' decision on contract cost, schedule, and performance and financial risk;

(3) The potential impact of a ''make'' or ''buy'' decision on known future mission or program activities at the facility or site;

(4) Past experience at the facility or site regarding ''make-or-buy'' decisions for the same, or similar, supplies or services;

(5) Consistent with the contractor's approved subcontracting plan, whether small, small disadvantaged, or other minority owned businesses will be afforded maximum practicable opportunity to compete for work that is subcontracted;

(6) Local market conditions, including contractor work force displacement and the availability of firms that can meet the work requirements with regard to quality, quantity, cost, and timeliness;

(7) Where the construction of new or additional facilities is required, that the cost of such facilities is in the Government's best interest when compared to subcontracting or privatization alternatives; and

(8) Whether all relevant requirements and costs of performing the work by the contractor and through subcontracting are considered and any different requirements for the same work are reconciled.

(e) *Approval.* The contracting officer shall approve all plans and updates. Once approved, make-or-buy plans shall remain effective for the term of the contract (up to a period of five years), unless circumstances warrant a change.

(f) *Administration.* The contractor's performance against the approved make-or-buy plan shall be monitored to ensure that

(1) The contractor is complying with the plan;

(2) Items identified for deferral decisions are addressed in a timely manner; and

(3) The contractor periodically updates the make-or-buy plan based on changed circumstances or significant new work.

970.1507–3 Contract clauses.

(a) The contracting officer shall insert the clause at 48 CFR (DEAR) 970.5204–XX, Make-or-Buy Plan, in management and operating contracts.

(b) The contracting officer shall insert the clause at 48 CFR (DEAR) 970.5204–XX, Displaced Employee Hiring Preference, in management and operating contracts.

17. New section 970.2275, consisting of subsections 970.2275–1 and 970.2275–2, is added to read as follows:

970.2275 Overtime management.

970.2275–1 General.

(a) Contracting officers shall require an overtime control plan from contractors whose overtime premium funds meet any one of the following criteria:

(1) They exceed the DOE management and operating contract median overtime expenditures for the preceding calendar year plus 2%;

(2) They exceed the DOE management and operating contractor median overtime expenditures for the preceding calendar year and the contractor's policy permits payment of overtime premiums for exempt employees earning equal to or greater than $45,000 per annum; or,

(3) They exceed the DOE management and operating contractor median overtime expenditures for the preceding calendar year and the contractor permits overtime payments on any basis other than hours worked in excess of 40 hours per week.

(b) The overtime control plan shall be on an annual basis and approved by DOE. It shall include submission of a semi-annual report on overtime usage to the contracting officer and implementation of an effective management evaluation program to assure that overtime usage is in accordance with the approved overtime control plan.

970.2275–2 Contract clause.

The contracting officer shall insert the clause at 48 CFR (DEAR) 970.5204–XX, Overtime Management, in management and operating contracts and contracts with advance understandings on cost.

970.2302–2 [Amended]

18. Subsection 970.2303–2 is amended by removing paragraphs (c), (d), and (e).

19. New section 970.2830 is added to read as follows:

970.2830 Contract clause.

The contracting officer shall insert the clause at 48 CFR (DEAR) 970.5204–31, Insurance—Litigation and Claims, in management and operating contracts. Individual deviations to 48 CFR (DEAR) 970.5204–31(h)(1)(i) may be used in contracts with nonprofit organizations when combined with a reduction in fee and approved by the Procurement Executive.

20. Section 970.3101–3 is amended by revising paragraph (a)(1) to read as follows:

970.3101–3 General basis for reimbursement of costs.

(a) * * *

(1) Reasonableness in accordance with FAR 31.201–3;

* * * * *

21. Section 970.3102–21, Fines and penalties, is revised to read as follows:

970.3102–21 Fines and penalties.

It is Department of Energy policy not to reimburse management and operating contractors for fines and penalties except as provided in 48 CFR (DEAR) 970.5204–13(e)(12), Allowable Costs and Fixed Fee (Management and Operating Contracts), 48 CFR (DEAR) 970.5204–14(e)(10), Allowable Costs and Fixed Fee (Support Contracts), and 48 CFR (DEAR) 970.5204–XX, Preexisting Conditions.

970.3102–22 [Removed]

22. Section 970.3102–22 is removed.

23. Subsection 970.3103, Contract Clauses, is amended to add new paragraph (d) to read as follows:

970.3103 Contract clauses.

* * * * *

(d) The clause at 970.5204–XX, Preexisting Conditions, shall be included in management and operating contracts. Alternate I of the clause shall be used in management and operating contracts with incumbent contractors.

24. Subsection 970.5204–2, Safety and health (Government-owned or leased) is revised to read as follows:

970.5204–2 Environment, safety, and health.

As prescribed in 48 CFR (DEAR) 970.2303–2(a), insert the following clause.

Environment, Safety, and Health (Month and Year TBE)

(a) The contractor shall perform the work under this contract in a manner that ensures adequate protection for workers, the public, and the environment and shall develop and manage a comprehensive program in support of these objectives, consistent with its Environment, Safety, and Health Management Plan and any applicable Authorization Agreement. The contractor shall exercise a degree of care commensurate with the risk of harm involved, particularly with respect to the operation of nuclear facilities, where applicable.

(b) The contractor shall comply with, and assist the Department of Energy in complying with (where identified by the Department), (i) all applicable Federal and non-Federal environment, safety, and health laws, regulations, and (ii) applicable directives identified in the clause of this contract on Departmental directives. The contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over environmental, safety, and health matters under this contract.

(c) *Management plan*. The contractor, within 60 days after the effective date of this contract or the modification incorporating this clause, shall submit to the contracting officer for review and approval an Environment, Safety, and Health Management Plan. This management plan shall contain the management program to be implemented by the contractor to protect the environment, workers, and the public. Guidance on preparation of the Management Plan will be provided by DOE as it may be periodically revised. The contractor shall annually submit an updated management plan to the DOE for review and approval reflecting budget decisions and contractor performance commitments for implementation in the budget execution year. Revisions to the management plan shall be subject to the change control process(es) established for the facility(ies) and activity(ies) managed by the contractor.

(d) *Authorization agreement(s).* This contract establishes the agreed-upon safety requirements and other operating safety parameters for operations covered by the contract, except with respect to operations for which the contracting officer has notified the contractor that a separate Authorization Agreement is necessary. Authorization Agreements may be used to establish, document, and control the safety requirements and other parameters for specified operations that ensure adequate protection of the workers, the public, and the environment. The contracting officer may at any time notify the contractor that specified operations may proceed only subject to the requirements of a DOE-approved Authorization Agreement. Upon such notification, the contractor shall prepare and submit for DOE approval an Authorization Agreement within the time frame specified in the notice. Updates and changes to any approved Authorization Agreement shall be subject to DOE approval.

(e) The contractor shall promptly correct any noncompliance with applicable environmental or safety and health requirements, the Management Plan, and any applicable Authorization Agreements. If the contractor fails to take corrective action or if, at any time, the contractor's acts or failure to act cause substantial harm or an imminent danger to the environment or health and safety of employees or the public, the contracting officer may issue an order stopping work in whole or in part. Any stop work order issued under this clause (including a stop work order issued by the contractor to a subcontractor in accordance with paragraph (f) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. Thereafter, an order authorizing the resumption of the work may be issued at the discretion of the contracting officer. The contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

(f) The contractor shall provide in its purchasing system, required under the clause of this contract entitled, Contractor Purchasing System, for policies, practices, and procedures for the flowdown of appropriate requirements of this clause to

subcontractors performing work on-site at a DOE-owned or -leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (e) of this clause.

25. Section 970.5204–13, Allowable costs and fixed-fee (management and operating contracts), is amended by revising the prescription, clause paragraphs (c), (d)(4), (d)(9), (e)(12), (e)(17), the note preceding (e)(36), and (e)(36) to read as follows:

970.5204–13 Allowable costs and fixed-fee (management and operating contracts).

As prescribed in 48 CFR (DEAR) 970.3103(a), insert the following clause.

Allowable Costs and Fixed-Fee (Management and Operating Contracts) (Month and Year TBE)

* * * * *

(c) Allowable costs. The allowable cost of performing the work under this contract shall be the costs and expenses that are actually incurred by the contractor in the performance of the contract work in accordance with its terms, that are necessary or incident thereto, and are determined to be allowable as set forth in this paragraph. The determination of allowability of cost shall be based on:

(1) Reasonableness in accordance with FAR 31.201–3;

(2) Standards promulgated by the Cost Accounting Standards Board, if applicable; otherwise, generally accepted accounting principles and practices appropriate to the particular circumstances; and

(3) Recognition of all exclusions and limitations set forth in this clause or elsewhere in this contract as to types or amounts of items of cost. Allowable costs shall not include the cost of any item described as unallowable in paragraph (e) of this clause except as indicated therein. Failure to mention an item of cost specifically in paragraphs (d) or (e) of this clause shall not imply either that it is allowable or that it is unallowable.

(d) * * *

(4) Reasonable litigation expenses, including counsel fees, if incurred in accordance with the clause of the contract entitled, Insurance—Litigation and Claims, and the DOE approved contractor litigation management procedures (including cost guidelines) as such procedures may be revised from time to time, and if not otherwise made unallowable in this contract.

* * * * *

(9) Repairs, maintenance, inspection, replacement, and disposal of Government-owned property and the restoration or clean-up of site and facilities to the extent approved by the contracting officer and as allowable under paragraph (f) of the clause of this contract entitled, Property.

* * * * *

(e) * * *

(12) Fines and penalties, except, with respect to civil fines and penalties only, if the contractor demonstrates to the contracting officer that—

(i) Such a civil fine or penalty was incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer; or

(ii) Such a civil fine or penalty was imposed without regard to fault and could not have been avoided by the exercise of due care.

* * * * *

(17) Losses or expenses:

(i) On, or arising from the sale, exchange, or abandonment of capital assets, including investments;

(ii) On other contracts, including the contractor's contributed portion under cost-sharing contracts;

(iii) In connection with price reductions to and discount purchases by employees and others from any source;

(iv) That are compensated for by insurance or otherwise or which would have been compensated by insurance required by law or by written direction of the contracting officer but which the contractor failed to procure or maintain through its own fault or negligence;

(v) That result from willful misconduct or lack of good faith on the part of any of the contractor's managerial personnel (as that term is defined in the clause of this contract entitled, Property);

(vi) That represent liabilities to third persons that are not allowable under the clause of this contract entitled, Insurance—Litigation and Claims; or

(vii) That represent liabilities to third persons for which the contractor has expressly accepted responsibility under other terms of this contract.

* * * * *

Note: In contracts with profit making contractors, add the following paragraph 36:

(36) Notwithstanding any other provision of this contract, the costs of bonds and insurance are unallowable to the extent they are incurred to protect and indemnify the contractor and/or subcontractor against otherwise unallowable costs, unless such insurance or bond is required by law, the express terms of this contract, or is authorized in writing by the contracting officer. The cost of commercial insurance to protect the contractor against the costs of correcting its own defects in materials or workmanship is an unallowable cost.

Section 970.5204–14, Allowable costs and fixed-fee (support contracts), is amended by revising clause paragraphs (c), (d)(4), (d)(10), (e)(10), (e)(15), the note preceding (e)(34), and (e)(34) to read as follows:

970.5204–14 Allowable costs and fixed-fee (support contracts).

As prescribed in 48 CFR (DEAR) 970.3103(a), insert the following clause.

Allowable Costs and Fixed-Fee (Support Contracts) (Month and Year TBE)

* * * * *

(c) Allowable costs. The allowable cost of performing the work under this contract shall be the costs and expenses that are actually incurred by the contractor in the performance of the contract work in accordance with its terms, that are necessary or incident thereto, and are determined to be allowable as set forth in this paragraph. The determination of allowability of cost hereunder shall be based on:

(1) Reasonableness in accordance with FAR 31.201–3;

(2) Standards promulgated by the Cost Accounting Standards Board, if applicable; otherwise, generally accepted accounting principles and practices appropriate to the particular circumstances; and

(3) Recognition of all exclusions and limitations set forth in this clause or elsewhere in this contract as to types or amounts of items of cost. Allowable costs shall not include the cost of any item described as unallowable in paragraph (e) of this clause except as indicated therein. Failure to mention an item of cost specifically in paragraphs (d) or (e) of this clause shall not imply either that it is allowable or that it is unallowable.

(d) * * *

(4) Reasonable litigation expenses, including counsel fees, if incurred in accordance with the clause of the contract entitled, Insurance—Litigation and Claims, in accordance with DOE approved contractor litigation management procedures (including cost guidelines) as such procedures may be revised from time to time, and if not otherwise made unallowable in this contract.

* * * * *

(10) Repairs, maintenance, inspection, replacement, and disposal of government-owned property to the extent directed or approved by the contracting officer and as allowable under paragraph (f) of the clause of this contract entitled, Property.

* * * * *

(e) * * *

(10) Fines and penalties, except, with respect to civil fines and penalties only, if the contractor demonstrates to the contracting officer that—

(i) Such a civil fine or penalty was incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer; or

(ii) Such a civil fine or penalty was imposed without regard to fault and could not have been avoided by the exercise of due care.

* * * * *

(15) Losses or expenses:

(i) On, or arising from the sale, exchange, or abandonment of capital assets, including investments;

(ii) On other contracts, including the contractor's contributed portion under cost-sharing contracts;

(iii) In connection with price reductions to and discount purchases by employees and other from any source;

(iv) That are compensated for by insurance or otherwise or which would have been compensated by insurance required by law or by written direction of the contracting officer but which the contractor failed to procure or maintain through its own fault or negligence;

(v) That result from willful misconduct or lack of good faith on the part of any of the contractor's managerial personnel (as that term is defined in the clause of this contract entitled, Property);

(vi) That represent liabilities to third persons that are not allowable under the

clause of this contract entitled, Insurance—Litigation and Claims; or

(vii) That represent liabilities to third persons for which the contractor has expressly accepted responsibility under other terms of this contract.

* * * * *

Note: In contracts with profit making contractors, add the following paragraph 34:

(34) Notwithstanding any other provision of this contract, the costs of bonds and insurance are unallowable to the extent they are incurred to protect and indemnify the contractor and/or subcontractor against otherwise unallowable costs, unless such insurance or bond is required by law, the express terms of this contract, or is authorized in writing by the contracting officer. The cost of commercial insurance to protect the contractor against the costs of correcting its own defects in materials or workmanship is an unallowable cost.

27. Subsection 970.5204–16 is amended by adding the following to the end of clause paragraph (a) and revising alternate clause paragraph (a) following Note 2 to read as follows:

970.5204–16 Payments and advances.

As prescribed in 48 CFR (DEAR) 970.3270, insert the following clause.

Payments and Advances (Month and Year TBE)

(a) * * * Fixed-fee payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the contracting officer. The contracting officer may offset against any such fee payment, the amounts owed to the Government by the contractor, including any amounts owed for disallowed costs under this contract. No fixed-fee payment may be withdrawn against the letter-of-credit without prior written approval of the contracting officer.

* * * * *

(a) *Payment of Base Fee and Award Fee Pool Amounts Earned.* The base fee shall become due and payable in equal monthly installments. Award fee pool amounts earned shall become due and payable following the issuance by the FDO of a Determination of Award Fee Pool Amount Earned, in accordance with the clause of this contract entitled, Award Fee: base fee and award fee. Base and award fee pool amount earned payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the contracting officer. The contracting officer may offset against any such fee payment, the amounts owed to the Government by the contractor, including any amounts owed for disallowed costs under this contract. No base or award fee pool amount earned payment may be withdrawn against the letter-of-credit without prior written approval of the contracting officer.

* * * * *

970.5204–18 [Removed and Reserved]

28.Section 970.5204–18 is removed and reserved.

29.Section 970.5204–21, Property, is amended by revising clause paragraphs (e), (f), (g), (i) and (j) to read as follows:

970.5204–21 Property.

As prescribed in 970.7104–43, insert the following clause.

Property (Month and Year TBE)

* * * * *

(e) Protection of government property—Management of high-risk property and classified materials.

(1) The contractor shall take all reasonable precautions, and such other actions as may be directed by the contracting officer, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect government property in the contractor's possession or custody.

(2) The contractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management contained in the Federal Property Management Regulations (41 CFR part 101) and the Department of Energy Property Management Regulations (41 CFR part 109).

(3) High-risk property is property, the loss, or the unintended or premature transfer, of which could pose risks to the public, the environment, or the national security interests of the United States. High risk property includes proliferation-sensitive, nuclear-related dual-use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

(f) *Risk of loss of Government property.* (1) The contractor shall be responsible and compensate the Government for the loss or destruction of, or damage to, Government property unless the contractor demonstrates to the contracting officer that such loss, destruction, or damage was not caused by any of the following:

(i) Willful misconduct or lack of good faith on the part of the contractor's managerial personnel;

(ii) Failure of the contractor to comply with any appropriate written direction of the contracting officer to safeguard such property under paragraph (e) of this clause; or

(iii) Failure of the contractor to establish, administer or properly maintain an approved property management system in accordance with paragraph (i) of this clause.

(2) As described in paragraph (f)(1) of this clause, the contractor's compensation to the Government shall be determined as follows:

(i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the contracting officer shall determine the value of such property, consistent with all relevant facts and circumstances.

(ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the contracting officer shall determine the value of such property, consistent with all relevant facts and circumstances.

(3) The cost of insurance obtained by the contractor to cover the risk of loss referred to in paragraph (f)(1) of this clause is not allowable.

(g) *Steps to be taken in event of loss.* In the event of any damage, destruction, or loss to Government property in the possession or custody of the contractor, the contractor:

(1) Shall immediately inform the contracting officer of the occasion and extent thereof,

(2) Shall take all reasonable steps to protect the property remaining, and

(3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the contracting officer. The contractor shall take no action prejudicial to the right of the Government to recover therefore, and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.

* * * * *

(i) *Property Management.*

(1) *Property Management System.*

(i) The contractor shall maintain and administer an approved property management system of accounting for and control, utilization, maintenance, repair, protection, and preservation of Government property in its possession under the contract. The contractor's property management system shall be approved by the contracting officer and maintained and administered in accordance with sound business practice, applicable Federal Property Management Regulations and Department of Energy Property Management Regulations, and such directives or instructions which the contracting officer may from time to time prescribe.

(ii) In order for a property management system to be approved, it must provide for:

(A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;

(B) Employee personal responsibility and accountability for Government-owned property;

(C) Full integration with the contractor's other administrative and financial systems; and

(D) A reliable method for continuously improving property management practices through the identification of best practices established by ''best in class'' performers.

(iii) Approval of the contractor's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (i)(2) of this clause.

(2) *Property Inventory.* (i) Unless otherwise directed by the contracting officer, the contractor shall within six months after execution of the contract provide a baseline inventory covering all items of property furnished by the Government.

(ii) In the event that the contractor is succeeding another contractor(s) in the

performance of this contract, the contractor shall conduct a joint reconciliation of the property inventory with the predecessor contractor. The contractor further agrees to participate in a joint reconciliation of the property inventory at the completion of this contract. This information will be used to provide a baseline for the succeeding contract as well as information for closeout of the predecessor contract.

(j) The term ''contractor's managerial personnel'' as used in this clause means the contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of:

(1) All or substantially all of the contractor's business; or

(2) All or substantially all of the contractor's operations at any one facility or separate location to which this contract is being performed; or

(3) A separate and complete major industrial operation in connection with the performance of this contract; or

(4) A separate and complete major construction, alteration, or repair operation in connection with performance of this contract; or

(5) A separate and discrete major task or operation in connection with the performance of this contract.

Note: Substitute the following paragraph (j) for nonprofit contractors:

(j) The term ''contractor's managerial personnel'' as used in this clause means the contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of:

(1) All or substantially all of the contractor's business; or

(2) All or substantially all of the contractor's operations at any one facility or separate location at which this contract is being performed; or

(3) The Laboratory officials responsible for the contractor's Government property system and/or a Major System Acquisition or Major Project as defined in DOE Order 4700.1 (Version in effect on effective date of contract).

970.5204–26 [Removed and Reserved]

30. Subsection 970.5204–26, Nuclear facility safety, is removed and reserved.

31. Subsection 970.5204–31 is revised to read as follows:

970.5204–31 Insurance—litigation and claims.

As prescribed in 48 CFR (DEAR) 970.2830(a), insert the following clause.

Insurance—Litigation and Claims (Month and Year TBE)

(a) The contractor may, with the prior written authorization of the contracting officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.

(b) The contractor shall give the contracting officer immediate notice in writing of any legal proceeding, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract. Except as otherwise directed by the contracting officer, in writing, the contractor shall furnish immediately to the contracting officer copies of all pertinent papers received by the contractor with respect to such action. The contractor, with the prior written authorization of the contracting officer, shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.

(c)(1) Except as provided in paragraph (c)(2) of this clause, the contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the contracting officer.

(2) The contractor may, with the approval of the contracting officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.

(3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the contracting officer may require or approve and with sureties and insurers approved by the contracting officer.

(d) The contractor agrees to submit for the contracting officer's approval, to the extent and in the manner required by the contracting officer, any other bonds and insurance that are maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement.

(e) Except as provided in subparagraphs (g) and (h) of this clause, or specifically disallowed elsewhere in this contract, the contractor shall be reimbursed—

(1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and

(2) For liabilities (and expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to and as an exception to the clause of this contract entitled, Obligation of Funds (48 CFR (DEAR) 970.5204–15).

(f) The Government's liability under paragraph (e) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(g) Notwithstanding any other provision of this contract, the contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, judgment and settlements)—

(1) Which are otherwise unallowable by law or the provisions of this contract; or

(2) For which the contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the contracting officer.

(h) Notwithstanding any other provision of this contract, the contractor's liabilities to third persons, including employees, (and any expenses incidental to such liabilities, including litigation costs) are not allowable unless the contractor demonstrates to the contracting officer that such liabilities were not caused by the willful misconduct or lack of good faith of the contractor's managerial personnel, or failure to exercise prudent business judgment by the contractor's managerial personnel.

(i)(1) Costs which may be unallowable under subparagraph (g)(1) or (h) of this clause shall be differentiated and accounted for by the contractor so as to be separately identifiable. The contracting officer shall generally withhold payment and not authorize the use of funds advanced under the contract for payment of such costs. However, the contracting officer may, in appropriate circumstances, provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement by the contractor to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

(2) Punitive damages are not allowable unless the contractor demonstrates to the contracting officer that the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the contracting officer.

(3) The cost of insurance specifically procured by the contractor to cover the third-party liabilities referenced in paragraph (g)(1) of this clause is not allowable.

(4) The term ''contractor's managerial personnel'' is defined in clause paragraph (j) of 48 CFR (DEAR) 970.5204–21.

(j) The contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the contractor for any unallowable or unreimbursable costs incurred in connection with contract performance.

(k) If any suit or action is filed or any claim is made against the contractor, the cost and expense of which may be reimbursable to the contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the contractor shall—

(1) Immediately notify the contracting officer and promptly furnish copies of all pertinent papers received;

(2) Authorize Department representatives to collaborate with: in-house or DOE-approved outside counsel in settling or defending the claim; or counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the insurance contract; and

(3) Authorize Department representatives to settle the claim or to defend or represent the contractor in and/or to take charge of any litigation, if required by the Department, when the liability is not insured or covered by bond. In any action against more than one Department contractor, the Department may require the contractor to be represented by common counsel. Counsel for the contractor may, at the contractor's own expense, be associated with the Department

representatives in any such claim or litigation.

(l) The provisions of 48 CFR (DEAR) 970.71 are not applicable to costs incurred under and in accordance with this clause and subparagraph (d)(4) of the clause at 48 CFR (DEAR) 970.5204–13 entitled, Allowable costs and fixed fee.

970.5204–32 [Removed and Reserved]

32. Subsection 970.5204–32, Required bond and insurance—exclusive of government property, is removed and reserved.

970.5204–41 [Removed and Reserved]

33. Subsection 970.5204–41, Preservation of individual occupational radiation exposure records, is removed and reserved.

970.5204–55 and 970.5204–56 [Removed and Reserved]

34. Subsections 970.5204–55 and 970.5204–56 are removed and reserved.

35. Subsection 970–5204–61 is amended by revising the presciptation and adding clause paragraph (h):

970.5204–61 Cost prohibitions related to legal and other proceedings.

As prescribed in 48 CFR (DEAR) 970.3103(c), insert the following clause.

Cost Prohibitions Related to Legal and Other Proceedings (Month and Year TBE)

* * * * *

(h) For proceedings against the contractor in which the contractor is alleged to have violated the False Claims Act, 31 U.S.C. 3730, and to the extent paragraph (b) of this clause is not otherwise applicable:

(1) Any costs of judgments against the contractor, and the associated litigation costs, and, except as authorized by the contracting officer, costs of settlements made by the contractor, and the associated litigation costs, are unallowable; and

(2) For those cases in which the Department of Justice does not intervene, contractor requests for provisional reimbursement of proceeding costs should be denied unless the General Counsel concurs in a determination that the case is so frivolous or devoid of merit that it would be in the interest of the government to provisionally allow such costs.

970.5204–62 [Removed and Reserved]

36. Subsection 970.5204–62, Environmental protection, is removed and reserved.

37. Subpart 970.52, Contract Clauses for Management and Operating Contracts, is amended to add 970.5204–XX, Preexisting Conditions; 970.5204–XX, Make-or-Buy Plan; 970.5204–XX, Displaced Employee Hiring Preference; 970.5204–XX, Laws, Regulations, and DOE Directives; 970.5204–XX, Ownership of Records; and 970.5204–XX, Overtime Management, to read as follows:

970.52 Contract Clauses for Management and Operating Contracts.
970.5204–XX Preexisting conditions.
970.5204–XX Make-or-buy plan.
970.5204–XX Displaced employee hiring preference.
970.5204–XX Laws, regulations, DOE directives.
970.5204–XX Ownership of records.
970.5204–XX Overtime management.

970.5204–XX Preexisting conditions.

As prescribed in 48 CFR (DEAR) 970.3103(d), insert the following clause.

Preexisting Conditions (Month and Year TBE)

(a) The Department agrees to reimburse the contractor, and the contractor shall not be held responsible, for any liability (including without limitation, a claim involving strict or absolute liability and any civil fine or penalty), expense, or remediation cost, but limited to those of a civil nature, which may be incurred by, imposed on, or asserted against the contractor arising out of any condition, act or failure to act which occurred before the contractor assumed responsibility on [Specify date contract began]. To the extent the acts or omissions of the contractor cause or add to any liability, expense or remediation cost resulting from conditions in existence prior to [Specify date contract began], the contractor shall be responsible in accordance with the terms and conditions of this contract.

(b) The contractor has the duty to inspect the facilities and sites and timely identify to the contracting officer those conditions which it believes could give rise to a liability, obligation, loss, damage, penalty, fine, claim, action, suit, cost, expense, or disbursement or areas of actual or potential noncompliance with the terms and conditions of this contract or applicable law or regulation, and the contractor has the responsibility to take corrective action, as directed by the contracting officer as required elsewhere in this contract.

(c) The obligations of the Government under this provision are subject only to the availability of appropriated funds.

Alternate I. As prescribed in 48 CFR (DEAR) 970.3103(d), substitute the following paragraph (a):

(a) Any liability, obligation, loss, damage, claim (including without limitation, a claim involving strict or absolute liability), action, suit, civil fine or penalty, cost, expense or disbursement, which may be incurred or imposed, or asserted by any party and arising out of any condition, act or failure to act which occurred before [Insert date of contract including this clause], in conjunction with the management and operation of [Insert name of facility], shall be deemed incurred under Contract No. [Insert number of prior contract].

970.5204–XX Make-or-buy plan.

As prescribed in 48 CFR (DEAR) 970.1507–3(a), insert the following clause:

Make-Or-Buy Plan (Month and Year TBE)

(a) *Definitions.*

Buy item means a work activity or property or services to be produced or performed by an outside source, including a subcontractor or an affiliate, subsidiary, or division of the contractor.

Make item means a work activity or property or services to be produced or performed by the contractor using its personnel and other resources at the Department of Energy facility or site.

Master make-or-buy plan means a contractor's written program for the contract that identifies work efforts or requirements that either are ''make items'' or ''buy items.''

(b) *Make-or-buy plan.* The contractor shall develop and implement a make-or-buy plan that establishes a preference for providing property and services on a least cost basis, subject to specific Department of Energy make or buy criteria identified in the contract or otherwise provided by the contracting officer. In developing and implementing its make-or-buy plan, the contractor agrees to assess subcontracting opportunities and implement subcontracting decisions in accordance with the following:

(1) The contractor will actively support internal productivity improvement and cost-reduction programs so that in-house performance options can be made more efficient and cost-effective.

(2) The contractor shall consider subcontracting opportunities with the maximum practicable regard for open communications with potentially affected employees and their representatives. Similarly, contractors will openly discuss their plans, activities, cost-benefit analyses, and decisions with the many stakeholders affected by such decisions, including representatives of the community and local businesses.

(3) Consistent with Section 3161 of the National Defense Authorization Act for Fiscal Year 1993, the contractor shall mitigate the social and economic impacts of subcontracting decisions, including work force displacement or restructuring, to the extent practicable. Mitigation shall include:

(i) The requirement for hiring preferences and retraining in a subcontract,

(ii) The provision of relocation and/or reemployment assistance, and

(iii) Consideration of early retirement opportunities.

(c) *Submission and approval.* The contractor shall submit a make-or-buy plan for approval in accordance with the schedule and other instructions provided by the contracting officer.The following documentation shall be prepared and submitted:

(1) A description of the each work item, and if appropriate, the identification of the associated Work Authorization or Work Breakdown Structure element;

(2) The categorization of each work item as ''must make,'' ''must buy,'' or ''can make or buy,'' with the reasons for such categorization in consideration of the program specific make or buy criteria (including least cost considerations). For non-core capabilities categorized as ''must make,'' a cost/benefit analysis must be performed for each item when:

(i) The contractor is not the least-cost performer, and

(ii) A program specific make-or-buy criterion does not otherwise justify a ''must make'' categorization;

(3) A decision to either ''make'' or ''buy'' in consideration of the program specific make or buy criteria (including least cost considerations) for work effort categorized as ''can make or buy'';

(4) Identification of potential suppliers and subcontractors, if known, and their location and size status;

(5) A recommendation to defer a make or buy decision where categorization of an identifiable work effort(s) is impracticable at the time of initial development of the plan;

(6) A description of the impact of a change in current practice of making or buying on the existing work force; and

(7) Any additional information appropriate to support and explain the plan.

(d) *Conduct of operations.* Once a master make or buy plan is approved, the contractor shall perform in accordance with the plan.

(e) *Changes to the master make-or-buy plan.* The master make- or-buy plan established in accordance with paragraph (b) of this clause shall remain in effect for the term of the contract, unless:

(1) A lesser period is provided either for the total plan or for individual items or work effort;

(2) The circumstances supporting the original make-or-buy decisions change subsequent to the initial approval, or

(3) New work is identified. At least annually, the contractor shall review its approved make-or-buy plan to ensure that it reflects current conditions. Changes to the approved make-or-buy plan shall be submitted in advance of the effective date of the proposed change in sufficient time to permit evaluation and review. All changes shall be submitted in accordance with instructions provided by the contracting officer. Modification of the make-or-buy plan to incorporate proposed changes or additions shall be effective upon the contractor's receipt of the contracting officer's written approval.

970.5204–XX Displaced employee hiring preference.

As prescribed in 48 CFR (DEAR) 970.1507–3(b), insert the following clause.

Displaced Employee Hiring Preference (Month and Year TBE)

(a) *Definition.*

Eligible employee means a current or former employee of the [insert name of facility] whose position of employment has been, or will be, affected by the downsizing, contracting out decision, or subcontracting decision of a Department of Energy defense nuclear facility and who has also met the eligibility criteria contained in the Department of Energy's Interim Planning Guidance for Contractor Work Force Restructuring.

(b) The contractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this contract when that employee is qualified to perform the work.

(c) The requirements of this clause shall be included in all subcontracts awarded in accordance with this contract at any tier which exceed $500,000 in value, unless a statute, such as 41 U.S.C. Section 403 on commercial items, intends to preclude inclusion of such a requirement.

970.5204–XX Laws, regulations, and DOE directives.

As prescribed in 48 CFR (DEAR) 970.0470–2, insert the following clause.

Laws, Regulations, and DOE Directives (Month and Year TBE)

(a) In performing work under this contract, the contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations, unless relief has been granted in writing by the appropriate regulatory agency. A List of Applicable Laws and Regulations may be appended to this contract for information purposes. Omission of any applicable law or regulation from the List does not affect the obligation of the contractor to comply with such law or regulation pursuant to this paragraph.

(b) In performing work under this contract, the contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, identified in the List of Applicable Directives appended to this contract. The contracting officer may, from time to time and at any time, revise this List by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising this List, the contracting officer shall notify the contractor in writing of the Department's intent to revise this List and provide the contractor with the opportunity to assess the effect of the contractor's compliance with the revised list on contract cost and funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract, including an alternative set of requirements incorporated by reference in accordance with paragraph (d) of this clause. Within 30 days after receipt of the contracting officer's notice, the contractor shall advise the contracting officer in writing of the potential impact of the contractor's compliance with the revised list. Based on the information provided by the contractor and any other information available, the contracting officer shall decide whether to revise this List, and so advise the contractor not later than 30 days prior to the effective date of the revision of the list. The contractor and the contracting officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision of the list pursuant to the clause entitled, Changes, of this contract.

(c) Environmental, safety, and health requirements applicable to this contract may be determined by an alternate process developed by the Department of Energy (i.e., the Standards/Requirements Identification process or the Necessary and Sufficient Process). When such alternate process is used, the resulting set of requirements shall be incorporated into the List of Applicable Directives with full force and effect. These requirements shall supersede, in whole or in part, the environmental, safety, and health requirements previously made applicable to the contract by the List of Applicable Directives.

(d) The contractor shall be responsible for compliance with the requirements made applicable to this contract, regardless of the performer of the work. Consequently, the contractor shall be responsible for flowing down the necessary provisions to subcontracts at any tier to which the contractor determines such requirements apply.

970.5204–XX Ownership of records.

As prescribed in 48 CFR (DEAR) 970.0407–3, insert the following clause.

Ownership of Records (Month and Year TBE)

(a) *Government's records.* Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract shall be the property of the Government and shall be delivered to the Government or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the process of the work or, in any event, as the contracting officer shall direct upon completion or termination of the contract.

(b) *Contractor's own records.* The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause. [The contracting officer shall identify here any of the following listed records.

(1) Employment-related records (such as workers' compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; and personnel and medical/health-related records and similar files).

(2) Confidential contractor financial information, and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e., the contractor's corporate headquarters);

(3) Non-accounting records relating to any procurement action by the contractor; and

(4) The following categories of records maintained pursuant to the technology transfer clause of this contract:

(i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.

(ii) The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.

(iii) Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.]

(c) In the event of completion or termination of this contract, copies of any of the contractor's own records identified in paragraph (b) of this clause shall be delivered to DOE or its designees. Title to such records shall vest in DOE upon delivery.

(d) *Inspection, copying, and audit of records.* All records acquired or generated by the contractor under this contract in the possession of the contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designee at all reasonable times, and the contractor shall afford the Government or its designee reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the contracting officer, the contractor shall deliver such records to a location specified by the contracting officer for inspection, copying, and audit.

(e) *Applicability.* The provisions of paragraph (b) and (c) of this clause apply to all records without regard to the date or origination of such records.

(f) *Records retention standards.* Special records retention standards, described at DOE Order 1324.5, Records Management Program and DOE Records Schedules (version in effect on effective date of contract), are applicable for the classes of records described therein, whether or not the records are owned by the Government or the contractor. In addition, the contractor shall retain individual radiation exposure records generated in the performance of work under this contract until DOE authorizes disposal.

(g) *Flowdown.* The contractor shall include the requirements of this clause in all subcontracts that are of a cost-reimbursement type if any of the following factors is present:

(1) The value of the contract is greater than $2 million (unless specifically waived by the contracting officer);

(2) The contracting officer determines that the subcontract is, or involves, a critical task related to the contract; or

(3) The subcontract includes 48 CFR (DEAR) 970.5204–2, Environment, safety, and health, or similar clause.

970.5204–XX Overtime management.

As prescribed in 48 CFR (DEAR) 970.2275–2, insert the following clause:

Overtime Management (Month and Year TBE)

(a) The contractor shall submit and comply with an annual overtime control plan approved by the contracting officer if any of the following criteria are met:

(1) The contractor's overtime expenditures as a percent of payroll exceed the DOE contractor median overtime expenditures for the preceding calendar year plus 2 percent;

(2) The contractor's overtime expenditures as a percent of payroll exceed the DOE contractor median overtime expenditures for the preceding calendar year and the contractor's policy permits payment of overtime premium for exempt employees earning greater than or equal to $45,000 per annum; or

(3) The contractor's overtime as a percent of payroll exceed the DOE contractor median overtime expenditures for the preceding calendar year and the contractor provides for overtime premium pay on any other basis than for hours worked in excess of 40 per week.

(b) The annual overtime control plan shall include, at a minimum:

(1) An overtime premium fund (maximum dollar amount);

(2) Specific controls for casual overtime for non-exempt employees;

(3) Specific parameters for allowability of exempt overtime;

(4) An evaluation of alternatives to the use of overtime; and

(5) Submission of a semi-annual report that includes for exempt and non-exempt employees:

(i) Total cost of overtime;

(ii) Total cost of straight time;

(iii) Overtime cost as a percentage of straight-time cost;

(iv) Total overtime hours;

(v) Total straight-time hours; and

(vi) Overtime hours as a percentage of straight-time hours.

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Part VI

Postal Service

39 CFR Part 111

Classification Reform; Implementation Standards; Proposed Rule

POSTAL SERVICE

39 CFR Part 111

Classification Reform; Implementation Standards

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This notice presents the full text of the Domestic Mail Manual standards that the Postal Service proposes to adopt for implementing its Classification Reform proposals contained in Postal Rate Commission Docket No. MC96–2, Classification Reform II.

DATES: Comments on the proposed standards must be received on or before July 24, 1996.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Customer Mail Preparation, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 6830, Washington DC 20260–2405. Copies of all written comments will be available at the above address for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Leo F. Raymond, (202) 268–5199.

SUPPLEMENTARY INFORMATION: On April 4, 1996, pursuant to its authority under 39 U.S.C. 3621, *et seq.*, the Postal Service filed with the Postal Rate Commission (PRC) a request for a recommended decision on several mail classification reform proposals (Classification Reform II). The PRC designated the filing as Docket No. MC96–2. On April 11, 1996, the PRC published a notice of the filing, with a description of the Postal Service's proposals, in the Federal Register (61 FR 16129–16146).

As stated in the Postal Service filing, the changes proposed in Docket No. MC96–2 deliberately mirror those adopted by the Governors of the Postal Service in Docket No. MC95–1. The Postal Service believes that this feature of its proposal will expedite the ratemaking process and facilitate simplified implementing standards if the PRC's Recommended Decision substantially supports the Postal Service's proposal and if that Recommended Decision is approved by the Governors and implemented by the Board of Governors.

Until July 1, 1996 (the implementation date for Classification Reform I), rate eligibility and mail preparation standards are generally similar for both commercial and nonprofit mail. After that date, new standards will take effect for commercial rate categories, while the existing rules generally will be retained for the ''unreformed'' nonprofit categories pending the resolution of Docket No. MC96–2. In line with its proposal in Docket No. MC96–2, the Postal Service is proposing revised Domestic Mail Manual (DMM) standards for nonprofit rate categories that will substantively eliminate the preparation and rate eligibility distinctions between commercial and nonprofit mail that will exist during the interim period beginning July 1, 1996.

Accordingly, the following units of the DMM would be eliminated if the Postal Service's proposal is adopted, having been established solely to contain former general standards that are applicable only to nonprofit rate categories during the interim period beginning July 1: E239, E249, E639, E649, L001, L897, L898, L899, M690, M692, M693, M695, M696, M697, M698, M890, M891, M892, M893, M894, M895, M896, M897, and M898. Sections of other units would also be eliminated for the same reason, as described in the detailed text below.

The DMM text presented below reflects other organizational revisions that do not constitute substantive changes: E621 through E625 are consolidated into E620; E631 through E634 are consolidated into E630; and E641 is redesignated as E640.

The proposed rates described below in the revisions to DMM module R are as shown in the Postal Service's Request, currently pending before the Postal Rate Commission.

As shown in the DMM standards below, the ''breakpoint'' for Nonprofit Standard Mail is also amended, based on the rates proposed in Docket No. MC96–2. Standard Mail (A) is subject to postage at either a minimum rate per piece or a compound rate consisting of a flat piece charge and a pound charge that varies according to the weight of the piece, whichever is higher. The breakpoint is the calculated piece weight at or below which the piece is subject to the minimum per piece rate; above it, the piece/pound rate must be paid. Because the breakpoint is based on the mathematical relationship of specific rate elements, it must be adjusted whenever rates are changed. Moreover, because the heaviest Standard Mail (A) breakpoint was adopted as the maximum weight for automation First-Class Mail and Periodicals ''heavy letter'' pieces, the standards below (C810.2.3f) reflect a decrease of 0.0976 ounce in that weight (from the current 3.4383 ounces to the proposed 3.3407 ounces).

The Postal Service is also proposing to revise the current standard that prohibits the use of certain nonpaper, plastic-like materials (such as spun-bonded olefin) that do not accept the water-based ink used by the Postal Service to spray barcodes on mail. The current prohibition applies to pieces claimed at ZIP+4 rates, but ZIP+4 rates were eliminated for First-Class Mail, Regular Periodicals, and Regular Standard Mail in MC95–1, and a comparable proposal is advanced in MC96–2 for Preferred Periodicals and Nonprofit Standard Mail. Nonetheless, the Postal Service remains interested in optimizing its ability to ''upgrade'' (i.e., spray a barcode on) that volume of customer mail that was formerly prepared to qualify for the ZIP+4 rates (e.g., compatible with automated address recognition and automated processing) and that will not hereafter be barcoded before entry into the mailstream. For that reason, the implementing standards for MC95–1 (and those proposed below for MC96–2) prescribe simpler preparation standards for ''upgradable'' mail than for other nonupgradable pieces. Because the Postal Service seeks to barcode this mail by means similar to those used for ZIP+4 rate mail, the Postal Service proposes to continue to ban the use of certain nonpaper envelope materials for ''upgradable'' mail as it does now for ZIP+4 rate pieces. This ban is represented by the revision to C830.6.2 shown below.

All references to DMM sections shown in this proposed rule are based not on current Domestic Mail Manual Issue 49 but on the redesignations and revisions of the DMM published in the Federal Register on March 12, 1996 (61 FR 10068–10217), and scheduled for release as DMM Issue 50 (July 1, 1996). The rates shown in DMM module R below are the step 4 rates proposed in the Postal Service's MC96–2 request and, as such, are subject to change.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions of the DMM, incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual as set forth below:

A ADDRESSING

A000 Basic Addressing

A010 General Addressing Standards

* * * * *

4.0 RETURN ADDRESS

* * * * *

[Revise the heading and text of 4.5 to read as follows:]

4.5 Upgradable Mail

The return address on upgradable mail must be outside the OCR read area. If placed on the front of the mailpiece, the return address must be in the top left corner. It must extend no farther than half the length of the mailpiece from the left edge and no lower than one-third the height of the mailpiece from the top edge (see Exhibit 4.5).

* * * * *

A800 Addressing for Automation

1.0 ACCURACY

1.1 Basic Standards

[Revise 1.1 to read as follows:]

To qualify for automation rates, addresses must be sufficiently complete to enable matching to the current USPS ZIP+4 File when used with current CASS-certified address matching software. Standardized address elements are not required.

* * * * *

[Revise the heading of A900 to read as follows:]

A900 Customer Support

* * * * *

A950 Coding Accuracy Support System (CASS)

* * * * *

3.0 DATE OF ADDRESS MATCHING AND CODING

3.1 Updating Standards

[Amend 3.1 by revising the second sentence to read as follows:]

* * * Coding must be done within 90 days before the mailing date for all carrier route mailings and within 180 days before the mailing date for all non-carrier route automation rate mailings.

* * *

* * * * *

C CHARACTERISTICS AND CONTENT

* * * * *

C800 Automation-Compatible Mail

C810 Letters and Cards

* * * * *

2.0 DIMENSIONS

* * * * *

2.3 Weight

[Revise 2.3 to read as follows:]

Maximum weight limits are:

a. 2.5 ounces: upgradable Presorted First-Class Mail and upgradable nonautomation Standard Mail.

b. 3 ounces: automation First-Class Mail, automation Periodicals, and automation Standard Mail.

c. 3.3062 ounces: automation Enhanced Carrier Route heavy letters, subject to 7.5.

d. 3.3087 ounces: automation Regular Standard Mail heavy letters, subject to 7.5.

e. 3.3384 ounces: automation Nonprofit Enhanced Carrier Route heavy letters, subject to 7.5.

f. 3.3407 ounces: automation First-Class Mail, automation Periodicals, and automation Nonprofit Standard Mail heavy letters, subject to 7.5.

* * * * *

8.0 ENCLOSED REPLY CARDS AND ENVELOPES

8.1 Basic Standard

[Revise 8.1 to read as follows:]

Effective January 1, 1997 (or March 1, 1997, for Preferred Periodicals and Nonprofit Standard Mail), all letter-size reply cards and envelopes (business reply, courtesy reply, and metered reply mail) provided as enclosures in automation First-Class Mail, automation Periodicals, and automation Standard Mail (A), and addressed for return to a domestic delivery address, must meet the applicable standards in 1.0 through 7.0, bear a facing identification mark (FIM) meeting the standards in 8.2, and bear the correct delivery point barcode (or, for business reply mail (BRM), the correct ZIP+4 barcode) for the delivery address on the reply piece as defined by the USPS and subject to the barcode standards in C840. Mailers must certify that these standards have been met when the corresponding mail (in which the reply pieces are enclosed) is presented to the USPS. BRM pieces must also meet the applicable standards in S922.

* * * * *

C830 OCR Standards

* * * * *

6.0 USPS WATER-BASED BARCODE INK

* * * * *

6.2 Nonpaper Materials

[Revise 6.2 to read as follows:]

Certain nonpaper, plastic-like materials (such as spun-bonded Olefin) are not acceptable for upgradable pieces unless approved by USPS Engineering.

* * * * *

[Revise the heading of C840 to read as follows:]

C840 Barcoding Standards

* * * * *

2.0 BARCODE LOCATION—LETTER-SIZE PIECES

2.1 Barcode Clear Zone

[Amend 2.1 by replacing the term ''upgradable Regular Standard Mail'' with ''upgradable Standard Mail (A)'' in the first sentence to read as follows:]

Each piece in an automation rate mailing and each piece of upgradable Presorted First-Class Mail or upgradable Standard Mail (A) must have a barcode clear zone unless the piece bears a DPBC in the address block. * * *

2.2 General Standards

[Replace 2.2, 2.2a, 2.2b, and 2.2c with new 2.2 to read as follows:]

In automation rate mailings, pieces weighing 3 ounces or less may bear a DPBC either in the address block or in the barcode clear zone; pieces weighing more than 3 ounces (up to the maximum weight permitted by C810) must bear a DPBC in the address block.

* * * * *

[Revise the heading of 8.0 to read as follows:]

8.0 ZIP+4 OR 5-DIGIT BARCODES

8.1 Automation Pieces

[Replace 8.1, 8.1a, 8.1b, and 8.1c with new 8.1 to read as follows:]

Except under 8.3, letter-size pieces in automation rate mailings may not bear a 5-digit or ZIP+4 barcode in the lower right corner (barcode clear zone); such pieces may bear a 5-digit or ZIP+4 barcode in the address block only if a DPBC appears in the lower right corner. Except under 8.3, flat-size pieces may not bear a 5-digit barcode.

* * * * *

8.3 Temporary Exception to Barcoding

[Revise 8.3 to read as follows:]

Until January 1, 1997, up to 10% of the pieces in an automation Periodicals mailing of flat-size pieces may be prepared with only a 5-digit barcode (subject to C840); and up to 10% of the pieces in an automation Periodicals mailing of letter-size pieces may be prepared without a barcode or with only a ZIP+4 barcode (subject to C840). Pieces within this 10% allowance must be combined and presorted with the rest

of the mailing, with postage paid at the applicable nonautomation Periodicals rate and supported by documentation under P012.

* * * * *

E ELIGIBILITY

* * * * *

E100 First-Class Mail

* * * * *

E140 Automation Rates

1.0 BASIC STANDARDS

* * * * *

1.5 Enclosed Reply Cards and Envelopes

Effective January 1, 1997, all letter-size reply cards and envelopes (business reply, courtesy reply, and metered reply mail) provided as enclosures in automation First-Class Mail must meet the standards in C810 for enclosed reply cards and envelopes. Mailers must certify that this standard has been met when the corresponding mail (in which the reply pieces are enclosed) is presented to the USPS.

* * * * *

E200 Periodicals

E210 Basic Standards

E211 All Periodicals

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14.0 BASIC RATE ELIGIBILITY

* * * * *

[Revise the heading of 14.3 to read as follows:]

14.3 Adjustments and Discounts

[Replace 14.3, 14.3a, 14.3b, 14.3c, and 14.3d with new 14.3 to read as follows:]

Postage for Periodicals is reduced by all applicable adjustments and discounts. The nonadvertising adjustment applies to the outside-county piece rate charges and is computed under P013. Presort and automation discounts are available under E230 and E240, respectively. Destination entry discounts are available under E250 for copies entered at specific USPS facilities.

* * * * *

E230 Nonautomation Rates

[Remove E239 and redesignate E231 as E230.]

1.0 GENERAL INFORMATION

1.1 Standards

[Amend 1.1 by replacing the reference ''M210'' with ''M200'' to read as follows:]

The standards for presort rates are in addition to the basic standards for Periodicals in E210, the standards for other rates or discounts claimed, and the applicable preparation standards in M200, M810, or M820. Not all combinations of presort level, automation, and destination entry discounts are permitted.

* * * * *

2.0 CARRIER ROUTE RATES

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2.2 Eligibility

[Amend 2.2 by replacing the reference ''M210'' with ''M200'' in the introductory text to read as follows:]

Preparation to qualify eligible pieces for carrier route rates is optional and is subject to M200. Carrier route sort need not be performed for all carrier routes in a 5-digit area. Specific rate eligibility is subject to these standards:

* * * * *

3.0 3/5 RATES

[Amend 3.0 by revising the introductory text to read as follows:]

Subject to M200, 3/5 rates apply to pieces not claimed at in-county rates, as follows:

* * * * *

4.0 BASIC RATES

[Revise 4.0 to read as follows:]

Basic rates apply to pieces prepared under M200 but not claimed at Carrier Route or 3/5 rates.

[Redesignate current 5.0 and 6.0 as 6.0 and 7.0, respectively; add new 5.0 to read as follows:]

5.0 IN-COUNTY RATES

In-county Basic rates apply to all pieces eligible for in-county rates that are not also eligible under 2.0 for in-county Carrier Route rates.

* * * * *

E240 Automation Rates

[Remove E249 and redesignate E241 as E240.]

1.0 BASIC STANDARDS

1.1 All Pieces

[Amend 1.1 by revising the introductory text to read as follows:]

All pieces in an automation Periodicals mailing must:

* * * * *

1.2 Enclosed Reply Cards and Envelopes

[Revise 1.2 to read as follows:]

Effective January 1, 1997 (or March 1, 1997, for Preferred Periodicals), all letter-size reply cards and envelopes (business reply, courtesy reply, and metered reply mail) provided as enclosures in automation Periodicals must meet the standards in C810 for enclosed reply cards and envelopes. Mailers must certify that this standard has been met when the corresponding mail (in which the reply pieces are enclosed) is presented to the USPS.

1.3 Temporary Exception to Barcoding

[Revise 1.3 to read as follows:]

Until January 1, 1997, up to 10% of the pieces in an automation Periodicals mailing of flat-size pieces may be prepared with only a 5-digit barcode (subject to C840); and up to 10% of the pieces in an automation Periodicals mailing of letter-size pieces may be prepared without a barcode or with only a ZIP+4 barcode (subject to C840). Pieces within this 10% allowance must be combined and presorted with the rest of the mailing, with postage paid at the applicable nonautomation Periodicals rate and supported by documentation under P012.

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E600 Standard Mail

E610 Basic Standards

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E612 Additional Standards for Standard Mail (A)

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4.0 BULK RATES

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4.2 Minimum Per Piece Rates

[Revise 4.2 to read as follows:]

The minimum per piece rates (i.e., the minimum postage that must be paid for each piece) apply to Enhanced Carrier Route rate pieces weighing no more than 0.2066 pound rounded (3.3062 ounces rounded); Regular nonautomation and automation rate pieces weighing no more than 0.2068 pound rounded (3.3087 ounces rounded); Nonprofit Enhanced Carrier Route rate pieces weighing no more than 0.2087 pound rounded (3.3384 ounces rounded); and Nonprofit nonautomation and automation rate pieces weighing no more than 0.2088 pound rounded (3.3407 ounces rounded). The base postage rate applies to pieces meeting minimum preparation standards (e.g., Basic rate) and may be reduced if additional standards are met. In applying the minimum per piece rates, mail is categorized as either letters or other than letters, based on whether the mail meets the letter-size standard in C050. That standard disregards address placement, except that, for automation rates, mail may be assigned

to the other than letters category based on the standards in C820. Address placement is also used to apply the aspect ratio standard in C810 to letter-size automation rates.

* * * * *

4.7 Annual Fees

[Replace 4.7, 4.7a, and 4.7b with new 4.7 to read as follows:]

Bulk rate Standard Mail (A) is subject to an annual mailing fee once each 12-month period. The fee may be paid in advance only for the next year and only during the last 30 days of the current service period. The fee charged is that in effect on the date of payment. Each mailer who enters mail at bulk rates paid with meter or precanceled stamps must pay an annual bulk mailing fee at each post office of mailing; a mailer paying this fee may enter clients' mail as well as the mailer's own. The mailer whose permit imprint appears on pieces in a mailing paid with a permit imprint must show that permit number on the postage statement and must pay the annual bulk mailing fee for that permit; this fee is in addition to the fee for an application to use permit imprints.

* * * * *

4.9 Preparation

[Amend 4.9 by revising the introductory text and 4.9c to read as follows:]

Each bulk rate mailing is subject to these general standards:

* * * * *

c. The same mailing may not contain both automation and nonautomation rate pieces.

* * * * *

E620 Nonautomation Nonpresort Rates

[Redesignate E621 as E620.1.0; revise to read as follows:]

1.0 SINGLE-PIECE STANDARD MAIL (A)

[Redesignate E621.1.1 through 1.6 as E620.1.1 through 1.6, respectively, and revise internal references accordingly; no other change in text.]

[Redesignate E622 as E620.2.0; revise to read as follows:]

2.0 PARCEL POST

[Redesignate chart under 2.1 as Exhibit 2.4 and revise redesignated 2.1 to read as follows:]

2.1 Basic Standards

Any Standard Mail (B) matter may be mailed at parcel post rates, subject to the basic standards in E611 and E613.

[Redesignate E622.1.2 and 1.3 as E620.2.2 and 2.3, respectively.]

* * * * *

[Redesignate E622.2.0, 3.0, and 4.0 as E620.2.4, 2.5, and 2.6, respectively, and revise internal references accordingly; no other change in text.]

2.4 Rate Eligibility

[Revise redesignated E620.2.4 to read as follows:]

Parcel post rates are based on zones; on whether a parcel is mailed and delivered within the service area of the same bulk mail center (BMC), auxiliary service facility (ASF), or other designated service area (as shown in Exhibit 2.4); and on the weight of the parcel. Specific rates and discounts are subject to these additional standards:

[Redesignate E622.2.1 through 2.5 as E620.2.4a through 2.4e, respectively, and revise internal references accordingly; no other change in text.]

* * * * *

2.5 Nonmachinable Surcharge

[Revise redesignated E620.2.5 to read as follows:]

The nonmachinable surcharge applies only to the items listed in 2.5a through 2.5i if mailed at the inter-BMC/ASF parcel post rates. The surcharge does not apply to those items or to other matter mailed at another Standard Mail (B) rate or if the mailer paid the special delivery or special handling fee. The nonmachinable surcharge applies to items that meet any of these standards:

[Remove the introductory text of E622.3.2 and redesignate E622.3.2a through 3.2i as E620.2.5a through 2.5i, respectively.]

* * * * *

2.6 Fees

[Revise redesignated E620.2.6 to read as follows:]

Parcel post is subject to these fees, as applicable:

[Redesignate E622.4.1 and 4.2 as E620.2.6a and 2.6b, respectively.]

* * * * *

[Redesignate E623 as E620.3.0.]

3.0 BOUND PRINTED MATTER

[Redesignate E623.1.1 through 1.4 as E620.3.1 through 3.4, respectively; no other change in text.]

[Redesignate E624 as E620.4.0.]

4.0 SPECIAL STANDARD MAIL

[Redesignate E624.1.1 through 1.4 as E620.4.1 through 4.4, respectively; no other change in text.]

[Redesignate E625 as E620.5.0.]

5.0 LIBRARY MAIL

[Redesignate E625.1.1 through 1.7 as E620.5.1 through 5.7, respectively; no other change in text.]

E630 Nonautomation Presort Rates

[Remove E639; redesignate E631 through E634 as E630.1.0 through 4.0, respectively, and revise as follows:]

1.0 REGULAR AND NONPROFIT STANDARD MAIL

[Redesignate E631.1.0 through 3.0 as E630.1.1 through 1.3, respectively; in redesignated 1.1 and 1.2, replace the term ''Regular Standard Mail'' with ''Regular or Nonprofit Standard Mail''; in redesignated 1.3, replace the term ''Regular rates'' with ''Regular and Nonprofit rates''; no other change in text.]

2.0 ENHANCED CARRIER ROUTE STANDARD MAIL

[Redesignate E632.1.1 through 1.7 as E630.2.1 through 2.7, respectively; in redesignated 2.3, replace the reference ''E641'' with ''E640''; redesignate E632.2.1 and 2.2 as E630.2.8 and 2.9, respectively; revise the heading of redesignated 2.8 to read as ''Basic Rates''; in redesignated 2.9, replace the reference ''1.6 and 1.7'' with ''2.6 and 2.7''; no other change in text.]

3.0 BULK BOUND PRINTED MATTER

[Redesignate E633.1.1 and 1.2 as E630.3.1 and 3.2, respectively; in redesignated 3.1, replace the phrase ''basic standards in E623'' with ''basic standards for bound printed matter in E620''; no other change in text.]

4.0 PRESORTED SPECIAL STANDARD MAIL

[Redesignate E634.1.0 and 2.1 through 2.5 as E630.4.1 and 4.2 through 4.6, respectively; no change in text.]

E640 Automation Rates

[Remove E649; redesignate E641 as E640; in 1.1, 1.1b, and 1.2, replace the term ''Regular Standard Mail'' with ''Regular or Nonprofit Standard Mail''; in 1.3, replace the term ''Regular automation rates'' with ''Automation rates''; in 1.4, replace the term ''Regular automation rates'' with ''Automation rates.'']

[Revise the heading of 1.0 to read as follows:]

1.0 REGULAR AND NONPROFIT RATES

1.1 All Pieces

[Amend 1.1 by revising the introductory text and 1.1b to read as follows:] All pieces in an automation

rate Regular or Nonprofit Standard mailing must:

* * * * *

b. Be part of a single mailing of at least 200 pieces or 50 pounds of pieces of automation rate Standard Mail (Regular and Nonprofit mailings must meet separate minimum volumes).

* * * * *

1.2 Enclosed Reply Cards and Envelopes

[Revise 1.2 to read as follows:]

Effective January 1, 1997 (or March 1, 1997, for Nonprofit Standard Mail), all letter-size reply cards and envelopes (business reply, courtesy reply, and metered reply mail) provided as enclosures in automation Regular or Nonprofit Standard Mail must meet the standards in C810 for enclosed reply cards and envelopes. Mailers must certify that this standard has been met when the corresponding mail (in which the reply pieces are enclosed) is presented to the USPS.

* * * * *

[Revise the heading of 2.0 to read as follows:]

2.0 ENHANCED CARRIER ROUTE RATES

2.1 All Pieces

[Amend 2.1 by revising the introductory text and 2.1b to read as follows:]

All pieces in an automation rate Enhanced Carrier Route Standard mailing (available for letters only) must:

* * * * *

b. Be part of a single mailing of at least 200 pieces or 50 pounds of pieces of automation rate Enhanced Carrier Route Standard Mail (Regular and Nonprofit mailings must meet separate minimum volumes).

* * * * *

2.4 Enclosed Reply Cards and Envelopes

[Revise 2.4 to read as follows:]

Effective January 1, 1997 (or March 1, 1997, for Nonprofit Enhanced Carrier Route Standard Mail), all letter-size reply cards and envelopes (business reply, courtesy reply, and metered reply mail) provided as enclosures in automation Enhanced Carrier Route Standard Mail must meet the standards in C810 for enclosed reply cards and envelopes. Mailers must certify that this standard has been met when the corresponding mail (in which the reply pieces are enclosed) is presented to the USPS.

* * * * *

E650 Destination Entry

* * * * *

E652 Parcel Post

[In 1.4, replace the reference ''E622'' with ''E620''; no other change in text.]

E670 Nonprofit Standard Mail

1.0 BASIC STANDARDS

1.1 Organization Eligibility

[Amend 1.1 by adding the qualifying phrase ''i.e., all nonautomation and automation Nonprofit rates'' to the end of the section to read as follows:]

Only organizations that meet the standards in 2.0 or 3.0 and that have received specific authorization from the USPS may mail eligible matter at the Nonprofit Standard Mail rates, i.e., all nonautomation and automation Nonprofit rates.

* * * * *

L LABELING LISTS

[Remove L001, L897, L898, and L899.]

M MAIL PREPARATION AND SORTATION

M000 General Preparation Standards

M010 Mailpieces

M011 Basic Standards

[Revise the heading of 1.0 to read as follows:]

1.0 TERMS AND CONDITIONS

* * * * *

1.2 Presort Levels

[Amend 1.2 by revising 1.2d, 1.2h, and 1.2i to read as follows:]

Terms used for presort levels are defined as follows:

* * * * *

d. 3-digit: the ZIP Code in the delivery address on all pieces begins with the same three digits (see L002, Column A).

* * * * *

h. SCF: the separation includes pieces for two or more 3-digit areas served by the same SCF (see L005), except that, where required or permitted by standard, mail for a single 3-digit area may be prepared in an SCF separation when no mail for other 3-digit ZIP Code areas is available.

i. ADC/AADC: all pieces are addressed for delivery in the service area of the same ADC or AADC (see L004 or L801).

* * * * *

1.4 Mailing

[Revise 1.4 to read as follows:]

A mailing is a group of pieces within the same class of mail and processing category that may be sorted together under the applicable standards. Other specific standards may define whether separate mailings may be combined, palletized, reported, or deposited together. The following types of mail may not be part of the same mailing despite being in the same class and processing category: automation and nonautomation mail; automation rate Enhanced Carrier Route and other mail; any combination of Enhanced Carrier Route, Regular, Nonprofit, and/or Nonprofit Enhanced Carrier Route Standard Mail.

* * * * *

M013 Optional Endorsement Lines

1.0 USE

1.1 Basic Standards

[Amend 1.1 by removing in the chart the entries for Optional City and Working; by revising the parenthetical following the first entry for Carrier Route to read as ''(Periodicals)''; by revising the parenthetical following the entry for SCF to read as ''(bound printed matter)''; and by removing the parenthetical ''(Except Preferred Periodicals and Nonprofit Standard Mail)'' following the entries for AADC and Mixed AADC.]

* * * * *

1.4 Rate Markings

[Amend 1.4 by replacing the term ''automation Regular Standard Mail'' with ''automation Regular or automation Nonprofit Standard Mail.''.]

* * * * *

M014 Carrier Route Information Lines

1.0 BASIC INFORMATION

[Amend 1.0 by replacing the terms ''carrier route and Level I/K Periodicals'' with ''Carrier Route Periodicals.''.]

* * * * *

M020 Packages and Bundles

[Remove 2.0; redesignate 3.0 and 4.0 as 2.0 and 3.0, respectively; revise the heading of redesignated 2.0 as ''Additional Standards—First-Class Mail, Periodicals, and Standard Mail (A)''; amend redesignated 2.1c by replacing the terms ''Regular Standard Mail'' with ''Standard Mail (A)'' and ''Regular Periodicals'' with ''Periodicals''; no other change in text.]

M030 Containers

M031 Labels

* * * * *

4.0 PALLET LABELS

* * * * *

4.8 Delivery Unit, SCF, DDU, and DSCF Rates

[Revise 4.8 to read as follows:]

If a 5-digit, 3-digit, or SCF pallet contains copies claimed at Periodicals

delivery unit and SCF zone rates, or Standard Mail DDU and DSCF rates, as applicable, the contents line of the pallet label must show the designation DDU/SCF, after the description of the contents.

* * * * *

M032 Barcoded Labels

1.0 BARCODED TRAY LABELS

1.1 Standards

[Revise 1.1 to read as follows:]

Effective January 1, 1997, barcoded tray labels are required for all mailings of automation rate First-Class Mail flat-size pieces and automation rate First-Class Mail, Periodicals, and Standard Mail (A) letter-size pieces. Barcoded tray labels may be used before that date and may be used for other trayed mail. Mailer-produced barcoded tray labels must meet the standards below. Revisions to preprinted barcoded labels (e.g., handwritten changes) are not permitted.

* * * * *

2.0 BARCODED SACK LABELS

2.1 Standards

[Revise 2.1 to read as follows:]

Effective January 1, 1997, barcoded sack labels are required for all mailings of automation rate Periodicals and Standard Mail (A) flat-size pieces prepared in sacks. Barcoded sack labels may be used before that date and may be used for other sacked mail. Mailer-produced barcoded sack labels must meet the standards below. Revisions to preprinted barcoded labels (e.g., handwritten changes) are not permitted.

* * * * *

M033 Sacks and Trays

[In 1.2a, replace the terms ''Regular Periodicals, and Regular and Enhanced Carrier Route Standard Mail (A)'' with ''Periodicals, and bulk rate Standard Mail (A)''; remove the last sentence of 1.2f; in 1.4, remove the phrase and clause ''except for Preferred Periodicals and Nonprofit Standard Mail, which are covered in 3.0 and 4.0''; in 1.7, replace the phrase ''Except for Nonprofit Standard and Preferred Periodicals mailings, after'' with ''After''; revise the heading of 2.0 to read as ''First-Class Mail, Periodicals, and Bulk Rate Standard Mail (A)''; remove 3.0 and 4.0; no other change in text.]

M040 Pallets

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M045 Palletized Mailings

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2.0 PACKAGES

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2.2 Size—Periodicals

[Amend 2.2 by replacing the references ''M210 and M290'' in 2.2a with ''M200'' to read as follows:]

Package size: Six-piece minimum, 20-pound maximum, except that:

a. Firm packages may contain as few as two copies of a publication and do not have to be consolidated into bundles with other packages to the same 5-digit destination. A firm ''package'' may be one piece for presort standards (see M200).

* * * * *

8.0 MIXED RATE LEVELS ON PALLETS—NONPROFIT STANDARD MAIL

* * * * *

8.2 Authorizations

[Amend 8.2 by revising the first sentence to read as follows:]

Mailers must obtain a USPS authorization before commingling nonautomation, automation, or Enhanced Carrier Route Nonprofit Standard Mail on pallets. * * *

* * * * *

8.4 Documentation

[Replace 8.4, 8.4a, and 8.4b with new 8.4 to read as follows:]

At the time of mailing, the mailer must provide standardized documentation, as required by the standards for the rate claimed, that includes pallet numbers to facilitate postal verification of the corresponding mail. When requested, the mailer must present pallets selected by USPS employees for verification.

8.5 Additional Pallet Standards

[Remove 8.5c and redesignate 8.5d as 8.5c.]

* * * * *

[Revise the heading of M050 to read as follows:]

M050 Delivery Sequence

[Amend 1.1 by replacing the references ''M290 or M693'' with ''M200 or M620''; no other change in text.]

M070 Mixed Classes

* * * * *

M073 Combined Mailings of Standard Mail Machinable Parcels

[Amend 1.1 by replacing the term ''Regular Standard Mail (A)'' with ''Standard Mail (A).''.]

* * * * *

M200 Periodicals (Nonautomation)

[Remove M290; redesignate M210 as M200 and revise internal references accordingly; amend 1.1, 1.2, and 2.3 (heading and text) by replacing the term ''Regular Periodicals'' with ''Periodicals.''.]

* * * * *

M600 Standard Mail (Nonautomation)

[Revise the heading of M610 to read as follows:]

M610 Single-Piece and Nonautomation Standard Mail (A)

* * * * *

[Revise the heading of 2.0 to read as follows:]

2.0 BASIC STANDARDS—NONAUTOMATION RATES

2.1 All Mailings

[Amend 2.1 by revising the introductory text, 2.1a, and 2.1e to read as follows:]

All nonautomation (Basic and 3/5) rate mailings are subject to these general standards (automation rate Standard Mail must be prepared under M810 or M820, as applicable):

a. Each mailing must meet the applicable standards in E630 and in M010, M020, and M820.

* * * * *

e. Subject to M012, all pieces eligible for and claimed at Nonprofit rates must be marked ''Nonprofit Organization'' (or ''Nonprofit Org.'' or ''Nonprofit''); all other pieces must be marked ''Bulk Rate'' (or ''Blk. Rt.''). In addition, pieces may be marked ''Single-Piece'' (or ''SNGLP'') under P600 to correct an incorrect rate marking.

* * * * *

2.3 Exception—Standard Mail (A)

[In 2.3, replace the terms ''Regular Standard Mail'' with ''Standard Mail'' and ''Regular nonletter nonautomation'' with ''nonletter nonautomation.''.]

* * * * *

[Revise the heading of 3.0 to read as follows:]

3.0 BASIC PREPARATION—NONAUTOMATION RATE LETTER-SIZE PIECES

* * * * *

[Revise the heading of 4.0 to read as follows:]

4.0 OPTIONAL PREPARATION—UPGRADABLE NONAUTOMATION RATE LETTER-SIZE PIECES

* * * * *

[Revise the heading of 5.0 to read as follows:]

5.0 PREPARATION—NONAUTOMATION RATE FLAT-SIZE PIECES AND ALL IRREGULAR PARCELS

* * * * *

[Revise the heading of 6.0 to read as follows:]

6.0 MACHINABLE PARCELS

* * * * *

[Revise the heading of 7.0 to read as follows:]

7.0 BEDLOADED BUNDLES OF NONAUTOMATION RATE FLAT-SIZE PIECES

[Amend 7.1 by replacing the term ''Regular nonautomation rate Standard Mail (A)'' with ''nonautomation rate Standard Mail (A)''; no other change in text.]

M620 Enhanced Carrier Route Standard Mail

1.0 BASIC STANDARDS

1.1 All Mailings

[Amend 1.1 by revising 1.1a and 1.1e to read as follows:]

All nonautomation rate Enhanced Carrier Route mailings are subject to these general standards (automation rate Enhanced Carrier Route mailings must be prepared under M810):

a. Each mailing must meet the applicable standards in E630 and in M010, M020, and M030.

* * * * *

e. Subject to M012, all pieces eligible for and claimed at Nonprofit rates must be marked ''Nonprofit Organization'' (or ''Nonprofit Org.'' or ''Nonprofit''); all other pieces must be marked ''Bulk Rate'' (or ''Blk. Rt.''). In addition, Basic, High Density, and Saturation rate pieces must each be marked ''ECRLOT,'' ''ECRWSH,'' or ''ECRWSS,'' respectively. Pieces not claimed at the corresponding rate must not be marked ''ECRLOT,'' ''ECRWSH,'' or ''ECRWSS'' unless paid at single-piece rate or a corrective single-piece rate marking is applied under P600.

* * * * *

1.4 Exception—Standard Mail (A)

[Revise 1.4 to read as follows:]

When a Standard Mail (A) mailing job could, by size, qualify for Standard Mail automation rates as either letters or flats, if part of the job is prepared as palletized flats at automation rates for flats, the remainder may be prepared as palletized flats at Enhanced Carrier Route rates and nonletter nonautomation rates if the number of nonletter nonautomation rate pieces does not exceed 10% of the total number of pieces in the entire mailing job.

* * * * *

5.0 RESIDUAL MAIL

[Amend 5.0 by replacing the term ''Regular Standard Mail rates'' with ''Regular or Nonprofit Standard Mail rates, as appropriate'' to read as follows:]

Pieces not sorted under 2.0 and either 3.0 or 4.0 must be prepared as a separate mailing at Regular or Nonprofit Standard Mail rates, as appropriate.

* * * * *

[Remove M690, M692, M693, M695, M696, M697, and M698.]

M800 All Automation Mail

[Revise the heading of M810 to read as follows:]

M810 Letter-Size Mail

1.0 BASIC STANDARDS

1.1 Standards

[Amend 1.1 by replacing the term ''Regular Periodicals'' with ''Periodicals'' in the first sentence to read as follows:]

Letter-size automation rate First-Class Mail, Periodicals, and Standard Mail (A) must be prepared under M810 and the eligibility standards for the rate claimed.

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1.3 Marking

[Revise 1.3 to read as follows:]

Periodicals require no marking. Subject to M012, all pieces must be marked ''AUTO'' (or ''AUTOCR'' for carrier route rate) and ''Presorted'' and ''First-Class'' if First-Class Mail; ''Nonprofit Organization'' (or ''Nonprofit Org.'' or ''Nonprofit'') if eligible Nonprofit Standard Mail; or ''Bulk Rate'' (or ''Blk. Rt.'') if other Standard Mail. Pieces not claimed at an automation rate may not be marked ''AUTO'' or ''AUTOCR'' unless single-piece rate postage is affixed or a corrective single-piece rate marking is applied under P100 or P600.

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1.5 Carrier Route

[Amend 1.5 by replacing the reference ''E641'' with ''E640.''.]

* * * * *

[Revise the heading of M820 to read as follows:]

M820 Flat-Size Mail

1.0 BASIC STANDARDS

1.1 Standards

[Amend 1.1 by replacing the term ''Regular Periodicals'' with ''Periodicals'' in the first sentence to read as follows:]

Flat-size automation rate First-Class Mail, Periodicals, and Standard Mail (A) must be prepared under M820 and the eligibility standards for the rate claimed.

* * *

* * * * *

1.4 Marking

[Revise 1.4 to read as follows:]

Periodicals require no marking. Subject to M012, all pieces must be marked ''AUTO'' and ''Presorted'' and ''First-Class'' if First-Class Mail; ''Nonprofit Organization'' (or ''Nonprofit Org.'' or ''Nonprofit'') if eligible Nonprofit Standard Mail; or ''Bulk Rate'' (or ''Blk. Rt.'') if other Standard Mail. Pieces not claimed at an automation rate may not be marked ''AUTO'' unless single-piece rate postage is affixed or a corrective single-piece rate marking is applied under P100 or P600.

1.5 Exception—Standard Mail (A)

[Amend 1.5 by replacing the terms ''Regular Standard Mail'' with ''Standard Mail'' and ''Regular nonletter nonautomation'' with ''nonletter nonautomation'' to read as follows:]

When a Standard Mail (A) mailing job could, by size, qualify for Standard Mail automation rates as either letters or flats, if part of the job is prepared as palletized flats at automation rates for flats, the remainder may be prepared as palletized flats at Enhanced Carrier Route rates and nonletter nonautomation rates if the number of nonletter nonautomation rate pieces does not exceed 10% of the total number of pieces in the entire mailing job.

* * * * *

[Remove M890, M891, M892, M893, M894, M895, M896, M897, and M898.]

P POSTAGE AND PAYMENT METHODS

P000 Basic Information

P010 General Standards

P011 Payment

1.0 PREPAYMENT AND POSTAGE DUE

1.1 Prepayment Conditions

[Amend 1.1 by revising 1.1e to read as follows:]

The mailer is responsible for proper payment of postage. Postage on all mail must be fully prepaid at the time of mailing, except as specifically provided by standard for:

* * * * *

e. Keys and identification devices returned to owners (see E620).

* * * * *

P012 Documentation

* * * * *

[Revise the heading of 2.0 to read as follows:]

2.0 STANDARDIZED DOCUMENTATION—FIRST-CLASS MAIL, PERIODICALS, AND STANDARD MAIL (A)

2.1 Basic Standard

[Amend 2.1 by replacing in the first sentence the terms ''Regular Periodicals'' with ''Periodicals'' and ''Regular and Enhanced Carrier Route Standard Mail'' with ''Standard Mail (A)'' to read as follows:]

For First-Class Mail, Periodicals, and Standard Mail (A), subject to the standards for the rate claimed, documentation must be produced by software certified under the USPS Presort Accuracy Validation and Evaluation (PAVE) or Manifest Analysis and Certification (MAC) programs, appropriate for the accompanying class of mail and rate claimed, or must be prepared to meet the criteria for standardized documentation in this section. * * *

2.2 Format and Content

[Amend 2.2 by revising the introductory text to read as follows:]

For First-Class Mail, Periodicals, and Standard Mail (A), standardized documentation includes:

* * * * *

2.5 Combined and Copalletized Mailings

[Amend 2.5 by revising the introductory text to read as follows:]

For combined or copalletized mailings of Periodicals and Standard Mail (A) prepared under M045, the listing must show the following additional information:

* * * * *

[Remove 3.0; redesignate 4.0 as 3.0.]

* * * * *

P013 Rate Application and Computation

* * * * *

4.0 RATE APPLICATION—STANDARD MAIL (A)

* * * * *

4.3 Bulk Rates

[Revise 4.3 to read as follows:]

Bulk rates are based on the weight of the pieces and are applied differently to pieces weighing less than or equal to a ''breakpoint'' (rounded to four decimal places) and those weighing more, as follows:

a. The appropriate minimum per piece rate applies to pieces weighing 0.2066 pound (3.3062 ounces) or less (Enhanced Carrier Route rates), 0.2068 pound (3.3087 ounces) or less (Regular rates), 0.2087 pound (3.3384 ounces) or less (Nonprofit Enhanced Carrier Route rates), or 0.2088 pound (3.3407 ounces) or less (Nonprofit rates).

b. A rate determined by adding the appropriate fixed per piece charge and the corresponding variable per pound charge (based on the weight of the piece) applies to pieces weighing more than 0.2066 pound (3.3062 ounces) (Enhanced Carrier Route rates), 0.2068 pound (3.3087 ounces) (Regular rates), 0.2087 pound (3.3384 ounces) (Nonprofit Enhanced Carrier Route rates), or 0.2088 pound (3.3407 ounces) (Nonprofit rates).

* * * * *

P014 Refunds and Exchanges

* * * * *

4.0 REFUND REQUESTS FOR EXCESS POSTAGE—AT TIME OF MAILING (''VALUE ADDED REFUNDS'')

* * * * *

4.13 Standard Mail (A)

[Replace 4.13, 4.13a, 4.13b, and 4.13c with new 4.13 to read as follows:]

If a value added refund request is submitted when a Standard Mail (A) mailing is presented to the USPS, each piece must be letter-size, weigh less than the applicable maximum weight for automation mail prescribed in C810, be part of an automation rate mailing, and be metered by the presenter or the presenter's customer at a 3/5 nonautomation rate or at any automation minimum per piece rate. Pieces for each entry must be prepared as a separate mailing if the destination entry rates are claimed.

* * * * *

P040 Permit Imprints

* * * * *

2.0 PREPARING PERMIT IMPRINTS

* * * * *

2.5 References to Expedited Handling

[Amend 2.5 by revising 2.5a to read as follows:]

Except for postcard-size mail and imprints placed on address labels, permit imprints on bulk rate Standard Mail (A) bearing references to expedited handling or delivery (e.g., ''Priority,'' ''Express,'' ''Overnight'') must:

a. Show the words ''Bulk Rate'' or ''Nonprofit Organization'' (or ''Nonprofit Org.'' or ''Nonprofit'') more prominently than other words in the imprint.

b. Have a clear space of at least 3/8 inch around the entire permit imprint.

* * * * *

4.0 FORMATS

4.1 Basic Standard

[Amend the Nonprofit Standard Mail examples in Exhibit 4.1b by replacing the endorsement ''Carrier Route Presort'' with ''AUTOCR.'']

* * * * *

P600 Standard Mail

* * * * *

3.0 AUTOMATION RATES

3.1 Method

[Amend 3.1 by removing the parenthetical ''(including Nonprofit ZIP+4 and Barcoded rates)'' in the first sentence to read as follows:]

Postage on any mailing made at an automation rate must be paid with meter stamps, permit imprints, or precanceled postage, under applicable standards. * * *

* * * * *

P710 Manifest Mailing System (MMS)

* * * * *

3.0 KEYLINE

* * * * *

3.3 Rate Category Abbreviations

[Revise 3.3 and Exhibit 3.3b to read as follows:]

Keylines on First-Class Mail or bulk Standard Mail (A) may use only the rate category abbreviations in Exhibit 3.3a or Exhibit 3.3b, respectively. All pieces that qualify for more than one postage rate must show each rate category abbreviation, separated by a ''/'' (slash) (e.g., NV/DS).

* * * * *

EXHIBIT 3.3b—RATE CATEGORY ABBREVIATIONS—STANDARD MAIL (A)

Code	Rate Category
AV	Automation 5-Digit [letters only].
AT	Automation 3-Digit [letters only].
AF	Automation 3/5 [flats only].
AB	Automation Basic.
RA	Regular 3/5.
RB	Regular Basic.
EA	Enhanced Carrier Route Automation Basic [letters only].
EB	Enhanced Carrier Route Basic.
EH	Enhanced Carrier Route High Density.

EXHIBIT 3.3b—RATE CATEGORY ABBREVIATIONS—STANDARD MAIL (A)—Continued

Code	Rate Category
ES	Enhanced Carrier Route Saturation.
NV	Nonprofit Automation 5-Digit [letters only].
NT	Nonprofit Automation 3-Digit [letters only].
NF	Nonprofit Automation 3/5 [flats only].
NB	Nonprofit Automation Basic.
FA	Nonprofit 3/5.
FB	Nonprofit Basic.
PA	Nonprofit Enhanced Carrier Route Automation Basic [letters only].
PB	Nonprofit Enhanced Carrier Route Basic.
PH	Nonprofit Enhanced Carrier Route High Density.
PS	Nonprofit Enhanced Carrier Route Saturation.
DB	Destination Bulk Mail Center (DBMC).
DD	Destination Delivery Unit (DDU).
DS	Destination Sectional Center Facility (DSCF).
SP	Single-Piece Rate [when fewer than 200 pieces accompany automation rate mail].

* * * * *

P760 First-Class or Standard Mail Mailings With Different Payment Methods

* * * * *

2.0 POSTAGE

* * * * *

2.2 Metered Pieces—Standard Mail (A)

[Revise 2.2 to read as follows:]

Metered pieces in a combined mailing must bear postage at a nonautomation presort or automation rate for which the pieces are eligible. Additional postage due for metered pieces in a combined mailing is deducted from the mailer's postage due advance deposit account. Full postage must be affixed to accompanying single-piece rate mail.

* * * * *

2.4 Precanceled Pieces — Standard Mail (A)

[Revise 2.4 to read as follows:]

Pieces with precanceled stamps in a combined mailing must bear postage in any denomination of precanceled stamp permitted in an automation rate mailing. Nonprofit postage may appear only on pieces in a Nonprofit rate mailing that are eligible for and claimed at a Nonprofit rate. Additional postage due for precanceled stamp pieces in a combined mailing is deducted from the mailer's postage due advance deposit account. Full postage must be affixed to accompanying single-piece rate mail.

* * * * *

R RATES AND FEES

* * * * *

R200 Periodicals

* * * * *

[Revise 2.0, 3.0, and 4.0 to read as follows:]

2.0 PREFERRED—IN-COUNTY

2.1 Pound Rates

Per pound or fraction:

Zone	Rate
Delivery Unit	$0.112
All Others	0.122

2.2 Piece Rates

Per addressed piece:

Presort level	Nonautomation	Automation[1]	Letter-size
			Flat-size
Basic	$0.081	$0.081	$0.081
3/5			0.066
3-Digit		0.077	
5-Digit		0.064	
Carrier Route	0.043		
High Density	0.038		
Saturation	0.036		

[1] Lower maximum weight limits apply: letter-size at 3 ounces (or 3.3407 ounces for heavy letters); flat-size at 16 ounces.

* * * * *

3.0 PREFERRED—NONPROFIT

3.1 Pound Rates

Per pound or fraction:

a. For the nonadvertising portion: $0.138.

b. For the advertising portion:

Zone	Rate
Delivery Unit	$0.169
SCF	0.190
1 & 2	0.214
3	0.224
4	0.251
5	0.292
6	0.336
7	0.388
8	0.432

3.2 Piece Rates

Per addressed piece:

Presort level	Nonautomation	Automation[1]	
		Letter-size	Flat-size
Basic	$0.216	$0.186	$0.192
3/5	0.171		0.147
3-Digit		0.148	
5-Digit		0.148	
Carrier Route	0.104		
High Density	0.097		
Saturation	0.083		1

[1] Lower maximum weight limits apply: letter-size at 3 ounces (or 3.3407 ounces for heavy letters); flat-size at 16 ounces.

* * * * *

4.0 PREFERRED—CLASSROOM

4.1 Pound Rates

Per pound or fraction:

a. For the nonadvertising portion: $0.110.

b. For the advertising portion:

Zone	Rate
Delivery Unit	$0.169
SCF	0.190
1 & 2	0.214
3	0.224
4	0.251
5	0.292
6	0.336
7	0.388
8	0.432

4.2 Piece Rates

Per addressed piece:

Presort level	Nonautomation	Automation[1]	
		Letter-size	Flat-size
Basic	$0.171	$0.154	$0.148
3/5	0.128		0.113
3-Digit		0.118	
5-Digit		0.111	
Carrier Route	0.090		
High Density	0.088		
Saturation	0.083		

[1] Lower maximum weight limits apply: letter-size at 3 ounces (or 3.3407 ounces for heavy letters); flat-size at 16 ounces.

* * * * *

[Revise the heading of 5.0 to read as follows:]

5.0 PREFERRED—SCIENCE-OF-AGRICULTURE

* * * * *

R600 Standard Mail

* * * * *

[Revise 5.0 to read as follows:]

5.0 NONPROFIT

5.1 Letter-Size Minimum Per Piece Rates—Pieces 0.2088 lb. (3.3407 oz.) or Less

Entry discount	Nonautomation		Automation [1]		
	Basic	3/5	Basic	3-Digit	5-Digit
None	$0.132	$0.114	$0.099	$0.095	$0.082
DBMC	0.119	0.101	0.086	0.082	0.069
DSCF	0.114	0.096	0.081	0.077	0.064
DDU	.....	.....	.....	.....	.....

[1] Pieces weighing over 3 ounces subject to additional standards.

5.2 Nonletter-Size Minimum Per Piece Rates—Pieces 0.2088 lb. (3.3407 oz.) or Less

Entry discount	Nonautomation		Automation [1]	
	Basic	3/5	Basic	3/5
None	$0.195	$0.143	$0.171	$0.119
DBMC	0.182	0.130	0.158	0.106
DSCF	0.177	0.125	0.153	0.101
DDU	.....	.....	.....	.....

[1] Available only for automation-compatible flats.

5.3 Piece/Pound Rates—Pieces More Than 0.2088 lb. (3.3407 oz.)

Piece pound rate [1]	Nonautomation		Automation [2]	
	Basic	3/5	Basic	3/5
Per Piece	$0.100	$0.048	$0.076	$0.024
Per Pound (includes entry discount if applicable)	Plus	Plus	Plus	Plus
None	$0.455	$0.455	$0.455	$0.455
DBMC	0.393	0.393	0.393	0.393
DSCF	0.367	0.367	0.367	0.367
DDU	.....	.....	.....	.....

[1] Each piece is subject to both a piece rate and a pound rate.
[2] Available only for automation-compatible flats.

[Redesignate 6.0 through 11.0 as 7.0 through 12.0, respectively, with no change in text; add new 6.0 to read as follows:]

6.0 NONPROFIT ENHANCED CARRIER ROUTE

6.1 Letter-Size Minimum Per Piece Rates—Pieces 0.2087 lb. (3.3384 oz.) or Less

Entry discount	Nonautomation			Automation [1]
	Basic	High density	Saturation	Basic
None	$0.087	$0.081	$0.075	$0.079
DBMC	0.074	0.068	0.062	0.066
DSCF	0.069	0.063	0.057	0.061
DDU	0.063	0.057	0.051	0.055

[1] Pieces weighing over 3 ounces subject to additional standards.

6.2 Nonletter-Size Minimum Per Piece Rates—Pieces 0.2087 lb. (3.3384 oz.) or Less

Entry discount	Basic	High density	Satura-tion
None	$0.095	$0.088	$0.082
DBMC	0.082	0.075	0.069
DSCF	0.077	0.070	0.064
DDU	0.071	0.064	0.058

6.3 Piece/Pound Rates—Pieces More Than 0.2087 lb. (3.3384 oz.)

Piece/ pound rate [1]	Basic	High density	Satura-tion
Per Piece	$0.013	$0.006	$0.000
Per Pound (in-cludes entry dis-count if appli-cable)	Plus	Plus	Plus
None	$0.393	$0.393	$0.393
DBMC	0.331	0.331	0.331
DSCF	0.305	0.305	0.305
DDU	0.279	0.279	0.279

[1] Each piece is subject to both a piece rate and a pound rate.

* * * * *

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 96–16026 Filed 6–21–96; 8:45 am]

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Federal Register

Monday
June 24, 1996

Part VII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 801

Latex-Containing Devices; User Labeling; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N–0119]

RIN 0910–AA34

21 CFR Part 801

Latex-containing Devices; User Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the regulations to require all medical devices containing natural rubber latex that may directly or indirectly contact living human tissue to be labeled with a statement identifying the product as one which contains natural rubber latex and which may cause allergic reactions. The agency is also amending the regulation to require that hypoallergenicity claims be removed from latex medical gloves and other natural rubber latex medical devices because the modified human Draize test currently used to support hypoallergenicity claims addresses only chemical sensitivity, and it is inappropriate for determining protein sensitivity in humans. These requirements are being proposed in response to numerous reports that have been received of severe allergic reactions to a wide range of medical devices containing natural rubber latex.

DATES: Comments by September 23, 1996. FDA is proposing that the final regulation based on this proposal be effective 180 days after the date of its publication in the Federal Register.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Donald E. Marlowe, Center for Devices and Radiological Health (HFZ–100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2444.

SUPPLEMENTARY INFORMATION:

I. Background

Natural rubber latex is a milky fluid produced by the *Heavea brasiliensis* (rubber) tree. There is often confusion concerning the terminology used to describe the raw agricultural material derived from the rubber tree and the chemical nomenclature that refers to emulsions of synthetic rubbers and plastics to which natural rubber latex has been added.

Latex, either natural or synthetic, is a colloidal dispersion of a polymeric material in a liquid system mostly aqueous in nature (Ref. 1). ''Natural rubber latex,'' for the purpose of this proposed rule, means a milky fluid that consists of extremely small particles of rubber, obtained from the *H. brasiliensis* (rubber) tree, dispersed in an aqueous medium. It contains a variety of naturally occurring substances, including carbohydrates, lipids, phospholipids, proteins, minerals, small amounts of complex organic material, water, and cis–1,4 polyisoprene, in a colloidal suspension.

The phrase ''natural rubber latex'' refers to the raw material used in the manufacture of both natural rubber latex products and dry natural rubber products. These products are formed by two commonly employed manufacturing processes. One of these is the natural rubber latex manufacturing process (NRL process), which involves the use of natural latex in a concentrated liquid form. Products are formed from NRL processing by dipping, extruding, or coating, and are typically referred to as containing or made of ''natural rubber latex.'' Examples of devices manufactured by the NRL process include medical gloves, catheters, and condoms.

The dry natural rubber manufacturing process (DNR process) involves the use of coagulated natural latex in dried or milled sheets. Products are formed from the DNR process by compression molding, extrusion, or by converting the sheets into a solution for dipping. These products are typically referred to as containing or made of ''dry rubber.'' Examples of devices or device components containing dry rubber include syringes with dry rubber plungers, vial stoppers, and intravascular injection ports.

The phrase, ''contains natural rubber latex,'' as used herein, encompasses products made by either process, as well as products described as made of ''synthetic latex'' that include natural rubber latex in their formulations. This proposed rule would not apply to products made from synthetic latex, which do not include natural rubber latex in their formulation.

Since 1988, FDA has noted an increase in the number of reports submitted to its Medical Device Reporting (MDR) system regarding sensitivity to natural rubber latex proteins contained in medical devices. In May of 1990, FDA became aware of deaths associated with barium enema procedures. Further investigation of the problem revealed that these deaths were associated with anaphylactic reactions to the natural latex cuff on the tip of the barium enema catheters. In several hundred reports of adverse reactions to natural rubber latex that the agency has received since October 1988, 16 have involved deaths from anaphylactic shock. Furthermore, several scientific journals have reported incidents of sensitivity to natural rubber latex proteins in a wide range of medical devices. (See Refs. 2 through 18.)

Section 701(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(a)) authorizes FDA to issue substantive binding regulations for the efficient enforcement of the act. (*Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609 (1973); see also *Weinberger* v. *Bentex Pharmaceuticals, Inc.*, 412 U.S. 645, 653 (1973); *National Ass'n of Pharmaceutical Manufacturers* v. *FDA*, 637 F.2d 877 (2d Cir. 1981); *National Confectioners Ass'n* v. *Califano*, 569 F.2d 690 (D.C. Cir. 1978); *National Nutritional Foods Ass'n* v. *Weinberger*, 512 F.2d 688 (2d Cir.), *cert. denied*, 423 U.S. 825 (1975).)

Section 502(a) of the act (21 U.S.C. 352(a)) provides that a device is misbranded ''If its labeling is false or misleading in any particular.'' Section 201(n) of the act (21 U.S.C. 321(n)) provides that, in determining whether labeling of a regulated article (such as a device) is misleading

> * * * there shall be taken into account * * * not only representations made or suggested by statement, word, design, device, or any combination thereof, but also the extent to which the labeling * * * fails to reveal facts material in light of such representations * * * with respect to consequences which may result from the use of the article to which the labeling * * * relates under the conditions of use prescribed in the labeling or advertising thereof or under such conditions of use as are customary or usual.

The courts have upheld FDA's authority to prevent false or misleading labeling by issuing regulations requiring label warnings and other affirmative disclosures. (See, e.g., *Cosmetic, Toiletry, and Fragrance Association* v. *Schmidt*, 409 F. Supp. 57 (D.D.C. 1976), *aff'd without opinion*, Civil No. 75–1715 (D.C. Cir. August 19, 1977), even in the absence of a proven cause-and-effect relationship between product usage and harm; *Council for Responsible Nutrition* v. *Goyan*, Civil No. 80–1124 (D.D.C August 1, 1980).)

Section 502(f)(1) of the act provides that a device is also misbranded unless its labeling bears adequate directions for use. Adequate directions for use means

adequate directions under which a layperson can use a device safely and for the purpose for which it was intended. (See 21 CFR 801.5 and 801.6.)

II. Latex Labeling

FDA is proposing that medical devices containing natural rubber latex that may directly or indirectly contact living human tissue be labeled with a statement identifying the product as one which contains natural rubber latex, which may cause allergic reactions. Direct contact with living human tissue occurs when a natural rubber latex-containing medical device touches the skin, mucous, or serosal surfaces. Examples of indirect contact with living human tissue by a natural rubber latex-containing medical device include, but are not limited to, the following: Contact with natural rubber latex proteins that have become suspended in liquid, which can occur when injections are given through a natural rubber latex-containing injection port or a syringe with a natural rubber latex-containing plunger; contact with natural rubber latex protein that is airborne, often in conjunction with the use of glove dusting powder; and contact with natural latex residues that have been transferred to nonrubber latex-containing medical devices, or other objects or surfaces. Devices affected by this proposed rule would be required to be labeled with one of the following statements: ''This product contains natural rubber latex which may cause allergic reactions in some individuals''; ''This product has components that contain natural rubber latex which may cause allergic reactions in some individuals''; or ''This product is made from natural rubber latex which may cause allergic reactions in some individuals''.

The agency has provided three labeling options so that manufacturers may choose the language most appropriate for their products. The agency invites comments regarding whether FDA should require a single, uniform, labeling statement for all natural latex-containing medical devices, and the agency will consider comments recommending alternative language for the proposed labeling statements.

Representative examples of natural rubber latex-containing medical devices which would require such labels include, but are not limited to the following: Cuffed-barium enema tips and enteroclysis catheters; contraceptive devices such as condoms with or without spermicidal lubricant, cervical caps, diaphragms and accessories, and therapeutic douche apparati; airway and respiratory devices such as oxygen cannulas, nasopharyngeal airways, tracheal tubes and inflatable cuffs, tracheobronchial suction catheters, breathing bags and mouthpieces; dental and surgical equipment such as dental dams, orthodontic appliances and headgear, anaesthetic gas masks, epistaxis balloons, and endotracheal tubes; and frequently used hospital equipment such as urinary catheters and accessories, blood pressure cuffs, intravascular equipment with latex injection ports, electrode pads, tourniquets, enema bags, hot or cold water bottles, rubber sheets, stomach and intestinal tubes, hemodialysis equipment, wound drains, adhesive tape, elastic bandages, and medical gloves.

Medical gloves include surgeon's gloves, as classified at 21 CFR 878.4460, and patient examination gloves, as classified at 21 CFR 880.6250. Some medical gloves are made of materials that may not contain natural rubber latex in their formulations and, therefore, would not be subject to this proposal. It should be further noted that the term ''medical gloves'' is used to distinguish them from nonmedical gloves that are not regulated by FDA. Nonmedical gloves, commonly referred to as utility, industrial, protective, or general purpose gloves, are not medical devices if they are not intended and/or labeled for a medical purpose, such as prevention of disease. Such products would not be subject to this proposed rule.

This rule is being proposed because medical devices that are composed of natural rubber latex, or which contain components formulated from natural latex, pose a significant health risk to some health care consumers and providers. A statement on the label of medical devices identifying the presence of natural latex, and its risks, is considered to be necessary for the safe and effective use of such devices. The primary purpose of such a statement is to inform health care professionals and consumers about the presence and risks of natural rubber latex, and to ensure a safe medical environment for persons who have been identified as sensitive to natural rubber latex.

The agency believes that a statement on the labeling of the devices stating that the product contains natural rubber latex, and that the presence of natural rubber latex may cause allergic reactions, is essential. The omission of such information from the labeling of such a device would constitute an omission of a material fact, and would render the device misbranded within the meaning of section 502(a) of the act (21 U.S.C. 352(a)). Moreover, because users need to be aware of safety problems that may be caused by natural rubber latex, FDA believes that a device containing natural rubber latex, which is not labeled with information regarding the presence of natural rubber latex and its potential risks, fails to bear adequate directions for use, and is, therefore, also misbranded under section 502(f)(1) of the act.

Section 502(c) of the act provides that a device is misbranded ''[i]f any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.'' Accordingly, the proposed regulation would require the rubber latex sensitivity statement to be displayed prominently and conspicuously on the device labeling. If the labeling statement is not prominently displayed, the product would be deemed misbranded under section 502(c) of the act.

Accordingly, under the proposed rule, any natural rubber latex-containing medical device that is not labeled as required, and that is initially introduced or initially delivered for introduction into interstate commerce after the effective date of the final rule, would be misbranded under sections 201(n) and 502(a), (c), and (f)(1) of the act.

FDA believes that it is also necessary to prohibit certain labeling statements on devices that contain natural rubber latex. FDA has received reports of sensitivity to medical gloves labeled as ''hypoallergenic.'' FDA believes that this term, traditionally used with cosmetics, erroneously implies that the user of products labeled as hypoallergenic is assured that the risk of an allergic reaction to the chemicals or other materials in the products would be minimal. In the past, use of the ''hypoallergenic'' label has been based on results of the modified (human) Draize test. While this test may be appropriate for detecting sensitivity to residual levels of processing chemicals, the test cannot accurately detect the presence or absence of natural latex protein levels. Furthermore, current manufacturing processes cannot remove from devices the natural latex proteins below the level to which some individuals may be sensitive. Thus the risk of allergic reaction remains.

Therefore, the agency believes that the presence of the term ''hypoallergenic''

on the labeling of a natural rubber latex-containing device is false and misleading because it incorrectly implies that the product labeled as ''hypoallergenic'' may be used safely by latex sensitive persons. FDA also believes that products with such labeling fail to bear adequate directions for use because they do not state that rubber latex-containing products labeled as hypoallergenic may still cause allergic reactions. For these reasons, FDA is proposing that the hypoallergenic claim be removed from the labeling of natural rubber latex-containing medical devices. Accordingly, under the proposed rule, FDA would consider natural rubber latex-containing medical devices labeled as hypoallergenic that are initially introduced or delivered for introduction after the effective date of the final rule, to be misbranded under section 502(a) and (f)(1) of the act. Although manufacturers would no longer be permitted to label their rubber latex-containing devices as ''hypoallergenic,'' persons wishing to make claims regarding the sensitizing potential of manufacturing chemical residues (MTB's, thiurams, and carbamates) in finished latex products should contact the Division of Small Manufacturers Assistance (1–800–638–2041) and request a copy of the guidance document entitled ''Testing for Skin Sensitization to Chemicals in Latex Products.''

FDA does not intend to require a new submission under section 510(k) of the act (21 U.S.C. 360) (510(k) submission) based upon labeling changes made to comply with this proposed regulation, provided that no other changes requiring a new 510(k) submission under 21 CFR 807.81 are made to the device. FDA does not intend to require manufacturers of devices subject to an approved premarket approval (PMA) application to submit a PMA supplement under 21 CFR 814.39(d), for any change to the product labeling that would be required by this regulation. FDA intends, instead, to require manufacturers to submit an annual report under 21 CFR 814.39(e) for such changes.

III. Request for Comments

FDA recognizes that this regulation applies to an array of devices that vary widely in their manufacture and use. FDA welcomes comments on all aspects of the regulation, but particularly invites comments on the following areas:

1. Some of the devices to which this regulation applies may be sold in bulk packages which are then divided up and used individually. How can FDA best ensure that the message that the regulation is intended to convey reaches the ultimate user?

2. It has been suggested that the message could be conveyed by using a symbol, especially on smaller devices. FDA invites comments on whether using a symbol would be useful, and, if so, what would be an appropriate symbol?

IV. Exemptions and Variances

Affected persons may request an exemption or variance from the requirements of this regulation, if they believe that full compliance with the regulation is not necessary for the safe and effective use of the device. Requests for exemption or variance must be submitted in accordance with the requirements for a citizen petition set forth in 21 CFR 10.30.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. This proposed rule primarily requires a labeling change which would not have a significant economic impact on small entities, because the 180 days before the final rule based upon this proposal would become effective will allow most manufacturers to exhaust their existing supply of labels. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VII. Paperwork Reduction Act of 1995

FDA tentatively concludes that the labeling requirements in this proposed rule are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Rather, the proposed warning statements are ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

VIII. Comments

Interested persons may submit written comments regarding this proposed rule, by September 23, 1996, to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday Through Friday.

1. ''Introduction to Latex Compounding and Processing,'' *The Vanderbilt Latex Handbook,* 3d edition, 1987.

2. Turjanmaa, K., ''Incidence of Immediate Allergy to Latex Gloves in Hospital Personnel,'' *Contact Dermatitis,* 17: 27–275, 1987.

3. Turjanmaa, K., K. Laurila, S. Makinen-Kiljunen, and T. Reunala, ''Rubber Contact Urticaria-Allergenic Properties of 19 Brands of Latex Gloves,'' *Contact Dermatitis,* 19: 362–364, 1989.

4. Turjanmaa, K. and T. Reunala, ''Condoms as a Source of Latex Allergen and Cause of Contact Urticaria,'' *Contact Dermatitis,* 20: 360–364, 1989.

5. FDA medical alert—allergenic reactions to latex-containing medical devices, March 29, 1991.

6. Heese, A., J. Hintzenstern, K–P Peters, H. Koch, and O. Hornstein, ''Allergic and Irritant Reactions to Rubber Gloves in Medical Health Services,'' *Journal of the American Academy of Dermatology,* No. 5 (part 1): 831–839, November, 1991.

7. Hintzenstern, J., A. Heese, H. Koch, K–P Peters, and O. Hornstein, ''Frequency, Spectrum and Occupational Relevance of Type IV Allergies to Rubber Chemicals,'' *Contact Dermatitis,* 24: 244–252, 1991.

8. Tomazic, V., T. Withrow, B. Fisher, and S. Dillard, ''Short Analytical Review-Latex-Associated

Allergies and Anaphylactic Reactions,'' *Clinical Immunology and Immunopathology,* 64: 89–97, 1992.

9. Slater, J. and S. Chhabra, ''Latex Antigens,'' *Journal of Allergy and Clinical Immunology,* 89: 673–678, 1992.

10. Lahti, A. and K. Turjanmaa, ''Prick and Use Tests with 6 Globe Brands in Patients with Immediated Allergy to Rubber Proteins,'' *Contact Dermatitis,* 26: 259–262, 1992.

11. Jaeger, D., D. Kleinhans, A. Czuppon, and X. Baur, ''Latex-Specific Proteins Causing Immediate-Type Cutaneous, Nasal, Bronchial, and Systemic Reactions,'' *Journal of Allergy and Clinical Immunology,* 89: 759–768, 1992.

12. Berky, Z., J. Luciano, and W. James, ''Latex Glove Allergy--A Survey of the US Army Dental Corps,'' *Journal of the American Medical Association,* 268: 2695–2697, 1992.

13. Gonzalez, E., ''Latex Hypersensitivity: A New and Unexpected Problem,'' *Hospital Practice,* pp. 137–151, February 15, 1996.

14. Stehlin, D., ''Latex Allergies: When Rubber Rubs the Wrong Way,'' *FDA Consumer,* pp. 16–21, September 1992.

15. ACAI (American College of Allergy & Immunology), Interim Recommendations to Health Professionals & Organizations Regarding Latex Allergy Precautions, March, 1992.

16. Young, M., M. Meyers, L. McCulloch, and L. Brown, ''Latex Allergy-A guideline for perioperative nurses,'' *AORN Journal,* 56: 488–502, 1992.

17. Hamann, C. P., ''Natural Rubber Latex Protein Sensitivity in Review,'' *American Journal of Contact Dermatitis,* 4:1. March 1993, 4–21.

18. Marzulli, F. N., and H. I. Maibach, ''The Use of Graded Concentrations in Studying Skin Sensitizers: Experimental Contact Sensitization in Man,'' *Food, Cosmetics, and Toxicology,* 12:219–227, 1974.

19. USDHHS/PHS/FDA/CDRH, *Regulatory Requirements for Medical Gloves—A Workshop Manual,* FDA 93–4257, as amended May, 1993.

List of Subjects in 21 CFR Part 801

Labeling, Medical devices, and Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 801 is amended as follows:

PART 801—LABELING

1. The authority citation for 21 CFR Part 801 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 507, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 357, 360i, 360j, 371, 374).

2. New § 801.437 is added to subpart H to read as follows:

§ 801.437 User labeling for rubber latex-containing medical devices.

(a) This section applies to all medical device products composed of or containing, or having components which are composed of or contain, natural rubber latex that may directly or indirectly contact living human tissue. The term ''natural rubber latex'' includes natural rubber latex, dry rubber, and synthetic latex which contains natural rubber latex in its formulation.

(b) Data in the Medical Device Reporting System and scientific literature indicate that some individuals may be at risk of a severe anaphylactic reaction to natural rubber latex proteins. In order to protect the public health and minimize the risk to rubber latex sensitive individuals, medical devices containing natural rubber latex shall be labeled as set forth in paragraphs (c) and (d) of this section.

(c) Natural rubber latex-containing medical devices shall prominently and legibly bear one of the following statements on the device labeling, in conformance with section 502(c) of the act: ''This product contains natural rubber latex which may cause allergic reactions in some individuals''; ''This product has components that contain natural rubber latex which may cause allergic reactions in some individuals''; or ''This product is made from natural rubber latex which may cause allergic reactions in some individuals''.

(d) Because the natural rubber latex proteins to which some individuals are sensitive cannot be completely removed from latex gloves, the term ''hypoallergenic'' is inappropriate. Therefore, rubber latex gloves and other natural rubber latex-containing medical devices shall not contain the term ''hypoallergenic'' on their labeling.

(e) Any affected person may request an exemption or variance from the requirements of this section by submitting a citizen petition in accordance with § 10.30 of this chapter.

(f) Any device subject to this section that is not labeled in accordance with paragraphs (c) and (d) of this section, and that is initially introduced or initially delivered for introduction into interstate commerce after the effective date of this final regulation, is misbranded under sections 201(n) and 502(a) and (f)(1) of the act. Any such device that is not labeled in accordance with paragraph (c) of this section, is also misbranded under section 502(c) of the act.

Dated: June 17, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–15990 Filed 6–21–96; 8:45 am]

BILLING CODE 4160–01–F

Federal Register

Monday
June 24, 1996

Part VIII

Department of Commerce

Economic Development Administration

Economic Development Assistance Program for Disaster Recovery Activities; Availability of Funds; Notice

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 950302065–6177–04]

RIN 0610–ZA03

Economic Development Assistance Program for Disaster Recovery Activities; Availability of Funds

AGENCY: Economic Development Administration (EDA), Department of Commerce (DOC).

ACTION: Supplementary Notice.

SUMMARY: Effective immediately, EDA announces the policies and the application procedures for funds available to support disaster recovery programs designed to assist affected states and local communities recover from the consequences of flooding in the Mid-Atlantic states of Maryland, New York, Pennsylvania, Virginia, West Virginia, and including Kentucky; in the Northwestern states of Idaho, Oregon and Washington; at Devils Lake in North Dakota; and for other disasters.

EDA offers a variety of program tools to assist affected communities. The primary emphasis of EDA's program will be to assist flood-impacted areas with the development and implementation of strategies that are needed for post-disaster economic recovery of the area, including planning and technical assistance; the capitalization and recapitalization of Revolving Loan Funds; the construction of new and expanded infrastructure and development facilities required for economic development of the area; levee repairs; and other economic development programs designed to alleviate the economic distress of the areas.

As a response to the flooding in the Northwestern states, EDA will consider requests for assistance through grants to nonfederal facilities for levee repairs which are within the U.S. Army Corps of Engineers (Corps) geographic area of responsibility (i.e., contributing drainage areas of 400 square miles or greater) and needed to protect critical public infrastructure as part of its economic recovery assistance program for the Northwest Floods.

In carrying out its levee repair program, EDA will collaborate with the Corps to assure that the proposed levee repairs will meet all appropriate Corps criteria so that levees repaired under this Notice will be eligible in the future for participation in the Corps' emergency levee repair program that is authorized under Public Law 84–99. The final decision as to whether a levee will be repaired under this Notice will be solely that of EDA.

DATES: This announcement is effective June 24, 1996. Funds shall remain available until expended.

ADDRESSES: To establish merits of project proposals, interested parties should contact the EDA regional offices or the appropriate Economic Development Representatives for the area (see listing in Appendix A).

FOR FURTHER INFORMATION CONTACT: See listing in Appendix A of this Notice.

SUPPLEMENTARY INFORMATION: Refer to the Notice published on June 11, 1996, in the Federal Register (61 FR 29526) for information on EDA's general policies and other requirements.

Authority

The authority for these programs is the Public Works and Economic Development Act of 1965, (Pub.L. 89–136, 42 USC 3121–3246h), as amended (PWEDA). The funds are provided from the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134, Chapter 6). Catalog of Federal Domestic Assistance (CFDA):

The Special Economic Development and Adjustment Assistance Program—Long-Term Economic Deterioration (LTED) and Sudden and Severe Dislocation (SSED) are listed under CFDA 11.307 (13 CFR Part 308). Planning and Technical Assistance are listed under CFDA 11.302, 11.305 and 11.303 (13 CFR Part 307, Subpart A; and 13 CFR Part 307, Subpart E and F).

Funding Availability

Funds in the amount of $16.5 million are available for this disaster relief program and shall remain available until expended. Funds will be apportioned as follows: Mid-Atlantic and including Kentucky—$5.0 million; Northwest—$7.5 million; and Devils Lake—$4.0 million.

Grant Rates

Grant rates, as established by the Public Works and Economic Development Act of 1965, as amended (PWEDA) and its implementing regulations at 13 CFR chapter III, 61 FR 7979, March 1, 1996, as corrected in 61 FR 15371, April 8, 1996, and its interim-final rule at 60 FR 49670, September 26, 1996, may vary, if permitted by PWEDA and its implementing regulations, and will depend on the relative needs and financial capacity of applicants. In most cases, a nonfederal local share will be required. In rare and extenuating circumstances, EDA may waive the local share requirement where permitted by PWEDA and its implementing regulations at 13 CFR chapter III. Local share requirements are discussed in the 13 CFR chapter III. The specific section for each program that discusses grant rates is listed below:

1. See 13 CFR Part 308.7 for Special Economic Development Adjustment Assistance—Long-Term Economic Deterioration (LTED) and Sudden and Severe Dislocation (SSED);

2. See 13 CFR Part 307.5 for Technical Assistance; and

3. See 13 CFR Part 307.27 and 307.33 for the Planning Program.

The grant rate for levee repairs shall not exceed 75 percent. The nonfederal share of the cost of a levee rehabilitation project for which assistance is made available by EDA shall be:

—To provide all land, easements, rights-of-way, and dredged material disposal areas necessary for the project; and

—To provide 25 percent of the costs of construction of the project of which at least 5 percent shall be paid in cash.

Eligible Applicants

Eligible applicants include any of the states or political subdivisions thereof, including municipalities and quasi-public corporations and authorities, Indian tribes, and nonprofit corporations representing an EDA designated redevelopment area or part thereof located in areas affected by the flooding in the Mid-Atlantic states of Maryland, New York, Pennsylvania, Virginia, West Virginia and including Kentucky; in the Northwestern states of Idaho, Oregon and Washington; at Devils Lake in North Dakota; and other disasters. Eligible applicants are further identified in 13 CFR chapter III.

Levees which are within the Corps' geographic area of responsibility that were ineligible to receive assistance because of the lack of participation by a public sponsor prior to the recent flooding will be eligible for assistance from EDA, provided that:

—It is demonstrated that the levee protects ''critical public infrastructure;''

—A public sponsor is identified that can demonstrate sufficient financial capability to comply with the requirements of this section;

—The levee rehabilitation program otherwise meets the requirements established by the Corps for design, operation, and maintenance;

—It is demonstrated that the benefits derived from repair or reconstruction of the levee will exceed the repair costs;

—The public sponsor agrees to include its levee in the Corps' program and enters into a written agreement

acknowledging that future Federal assistance will be conditional upon the public sponsor's continued participation in the program (future Federal assistance means under the Corps' Public Law 84–99 Emergency Levee Repair Program); and

—The proposed work consists primarily and essentially of repairs to an existing levee.

Proposal Submission Procedures

Proposals for assistance under this disaster relief program shall be submitted to EDA with a completed Form ED–900, OMB Control No. 0610–0094. Applicants must clearly demonstrate how the EDA assistance will help the area recover from the economic hardship and other problems caused by the floods, or other disasters, and that such assistance has been preceded by sound planning. Interested parties should contact the appropriate Economic Development Representative for the area or the appropriate EDA Regional Office for a proposal package.

Application Procedures

A determination of whether to invite a grant application for EDA assistance will be issued based upon the outcome of the Agency's review of the applicant's preliminary application/proposal.

Funding Instrument

Funds will be awarded as grants in accordance with the requirements of Title I, Title III, Title IV, and Title IX of the Public Works and Economic Development Act of 1965, as amended (Pub. L. 89–136; 42 U.S.C. 3121 et. seq.) (PWEDA). The appropriate title for grant application and award will be determined by EDA based on the nature of the project and the eligibility of the area.

Levee Project Selection Criteria

It is anticipated that the funds announced herein for repairing levees may not be sufficient to repair all the levees for which requests are received. EDA will use the following criteria to select the levees to be repaired: (1) The critical nature of the infrastructure protected by the levee, (2) environmental impact, (3) past performance of the applicant regarding operation and maintenance of the existing levee, (4) the applicant's ability to ensure proper and efficient administration of the levee rehabilitation project and of satisfactory operation and maintenance of the levee in accordance with standards established by the Corps, (5) the feasibility of the project, cost and other factors considered, (6) the potential the project has for assisting in the post-disaster recovery of the area, and (7) the extent to which the project will directly or indirectly tend to improve opportunities in the area for the establishment or expansion of industrial or commercial facilities or primarily benefit members of low-income families.

To establish the merits of project proposals, interested parties should contact the EDA office for the area (see Appendix A) for a preapplication, ED–900P, OMB Control No. 0610–0094. Requests for assistance shall be submitted directly to the EDA Regional Office that serves the area (see Appendix A). Before submitting a preapplication to EDA for levee repairs, interested applicants should contact the appropriate Division or District Office of the Corps of Engineers to determine whether their levee would, after being repaired, be eligible for inclusion in the Corps' Public Law 84–99 Emergency Levee Repair Program. This determination must be in writing and a copy submitted with the applicant's preapplication request.

EDA, working in conjunction and collaboration with the Corps, will evaluate preapplications to determine whether they can meet the criteria established above before inviting formal applications. After all requests have been evaluated, EDA will notify the Corps regarding the potential projects for which a site inspection, Damage Survey Report and Benefit/Cost Analysis are required.

Following the review of the preapplications, the Damage Survey Reports and Benefit/Cost Analysis, EDA will invite those entities whose projects are selected for consideration to submit full applications.

Other Information

Except as modified herein, application procedures, competitive selection criteria and post-approval project implementation information for the applicable assistance program are described at 13 CFR Chapter III, 61 FR 7979, March 1, 1996, as corrected at 61 FR 15371, April 8, 1996, and its interim-final rule at 60 FR 49670, September 26, 1995.

Dated: June 19, 1996.

Phillip A. Singerman,

Assistant Secretary for Economic Development.

Appendix A—Affected EDA Regional Offices and Economic Development Representatives

For further information contact the appropriate EDA Regional Office or the Economic Development Representative listed below:

John E. Corrigan, Regional Director, Philadelphia Regional Office, Curtis Center, Independence Square West, Suite 140 South, Philadelphia, Pennsylvania 19106, Telephone: (215) 597–4603, Internet Address: JCorriga@doc.gov

Economic Development Representatives:

Patricia A. Flynn—Maryland, 2568–A Riva Road, Suite 200, Annapolis, MD 21401, Telephone: (410) 962–2513

Harold J. Marshall, II—New York, 620 Erie Boulevard West, Suite 104, Syracuse, NY 13204, Telephone: (315) 448–0938

Anthony M. Pecone—Pennsylvania, 1993A New Berwick Highway, Bloomsburg, PA 17815, Telephone: (717) 389–7560

Neal E. Noyes—Virginia, 700 Centre Building, Room 230, 704 East Franklin Street, Richmond, VA 23219, Telephone: (804) 771–2061

Byron R. Davis—West Virginia, Rose City Press Building, 550 Eagan Street, Room 305, Charleston, WV 25301, Telephone: (304) 347–5252

William J. Day, Jr., Regional Director, Atlanta Regional Office, 401 West Peachtree Street, N.W., Suite 1820, Atlanta, GA 30308–3510, Telephone: (404) 730–3002, Internet Address: WDAY@doc.gov

Economic Development Representative:

Bobby D. Hunter—Kentucky, 771 Corporate Drive, Suite 200, Lexington, KY 40503–5477, Telephone: (606) 224–7426

John Woodward, Regional Director, Denver Regional Office, 1244 Speer Boulevard, Room 670, Denver, CO 80204, Telephone: (303) 844–4714, Internet Address: JWoodwa3@doc.gov

Economic Development Representative:

Warren A. Albertson—North Dakota, Federal Building, Room 219, 225 South Pierre Street, Pierre, SD 57501, Telephone: (605) 224–8280

A. Leonard Smith, Regional Director, Seattle Regional Office, Jackson Federal Building, Room 1856, 915 Second Avenue, Seattle, Washington 98174, Telephone (206) 220–7660, Internet Address: LSmith7@doc.gov

Economic Development Representatives:

Aldred F. Ames—Idaho, Borah Federal Building, 304 North 8th Street, Room 44l, Boise, ID 83702, Telephone: (208) 334–1521

Anne S. Berblinger—Oregon, One World Trade Center, 121 S.W. Salmon Street, Suite 244, Portland, OR 97204, Telephone: (503) 326–3078

Lloyd P. Kirry—Washington, Jackson Federal Building, 915 Second Avenue, Room 1856, Seattle, WA 98174, Telephone: (206) 220–7682

[FR Doc. 96–16020 Filed 6–21–96; 8:45 am]

BILLING CODE 3510–24–P

Federal Register

Monday
June 24, 1996

Part IX

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Small Business Innovation Research Grants Program for Fiscal Year 1997; Solicitation of Applications; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research Grants Program for Fiscal Year 1997; Solicitation of Applications

Notice is hereby given that under the authority of the Small Business Innovation Development Act of 1982 (Pub. L. 97–219), as amended (15 U.S.C. 638) and Section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies programs for fiscal year ending September 30, 1987, and for other purposes, as made applicable by Section 101(a) of Public Law Number 99–591, 100 Stat. 3341, the U.S. Department of Agriculture (USDA) expects to award project grants for certain areas of research to science-based small business firms through phase I of its Small Business Innovation Research (SBIR) Grants Program. This program will be administered by the Office of Extramural Programs, Cooperative State Research, Education, and Extension Service. Firms with strong scientific research capabilities in the topic areas listed below are encouraged to participate. Objectives of the three-phase program include stimulating technological innovation in the private sector, strengthening the role of small businesses in meeting Federal research and development needs, increasing private sector commercialization of innovations derived from USDA-supported research and development efforts, and fostering and encouraging participation of women-owned and socially and economically disadvantaged small business concerns in technological innovation.

The total amount expected to be available for phase I of the SBIR Program in fiscal year 1997 is approximately $4,000,000. The solicitation is being announced to allow adequate time for potential recipients to prepare and submit applications by the closing date of September 5, 1996. The research to be supported is in the following topic areas:

1. Forests and Related Resources
2. Plant Production and Protection
3. Animal Production and Protection
4. Air, Water and Soils
5. Food Science and Nutrition
6. Rural and Community Development
7. Aquaculture
8. Industrial Applications
9. Marketing and Trade

The award of any grants under the provisions of this solicitation is subject to the availability of appropriations.

This program is subject to the provisions found at 7 CFR Part 3403, as amended. These provisions set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects. In addition, USDA Uniform Federal Assistance Regulations, as amended (7 CFR Part 3915), Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-free Workplace (Grants) (7 CFR Part 3017), New Restrictions on Lobbying (7 CFR Part 3018), and Managing Federal Gredit Programs (7 CFR Part 3) apply to this program. Copies of 7 CFR Part 3403, 7 CFR Part 3015, 7 CFR Part 3017, 7 CFR Part 3018, and 7 CFR Part 3 may be obtained by writing or calling the office indicated below.

The solicitation, which contains research topic descriptions and detailed instructions on how to apply, may be obtained by writing or calling the office indicated below. Please note that applicants who submitted SBIR proposals for fiscal year 1996 or who have recently requested placement on the list for fiscal year 1997 will automatically receive a copy of the fiscal year 1997 solicitation.

Proposal Services, Grants Management Branch, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, AG Box 2245, Washington, DC 20250–2245, Telephone: (202) 401–5048

Done at Washington, DC, this 18th day of June 1996.

B.H. Robinson,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 96–16033 Filed 6–21–96; 8:45 am]

BILLING CODE 3410–22–M

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§§ 1.61–1.169	(869–026–00088–3)	34.00	Apr. 1, 1995
§§ 1.170–1.300	(869–026–00089–1)	24.00	Apr. 1, 1995
§§ 1.301–1.400	(869–026–00090–5)	17.00	Apr. 1, 1995
§§ 1.401–1.440	(869–026–00091–3)	30.00	Apr. 1, 1995
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*§§ 1.501–1.640	(869–028–00091–6)	21.00	Apr. 1, 1996
§§ 1.641–1.850	(869–026–00094–8)	25.00	Apr. 1, 1995
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*§§ 1.908–1.1000	(869–028–00094–1)	26.00	Apr. 1, 1996
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§§ 1.1401–End	(869–026–00098–1)	33.00	Apr. 1, 1995
2–29	(869–026–00099–9)	25.00	Apr. 1, 1995
*30–39	(869–028–00098–3)	20.00	Apr. 1, 1996
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*50–299	(869–028–00100–9)	14.00	Apr. 1, 1996
300–499	(869–026–00103–1)	24.00	Apr. 1, 1995

Title	Stock Number	Price	Revision Date
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27 Parts:			
1–199	(869–026–00106–5)	37.00	Apr. 1, 1995
200–End	(869–026–00107–3)	13.00	[6] Apr. 1, 1994
28 Parts:			
1-42	(869–026–00108–1)	27.00	July 1, 1995
43-end	(869-026-00109-0)	22.00	July 1, 1995
29 Parts:			
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1910 (§§ 1910.1000 to end)	(869–026–00115–4)	22.00	July 1, 1995
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1927–End	(869–026–00118–9)	36.00	July 1, 1995
30 Parts:			
1–199	(869–026–00119–7)	25.00	July 1, 1995
200–699	(869–026–00120–1)	20.00	July 1, 1995
700–End	(869–026–00121–9)	30.00	July 1, 1995
31 Parts:			
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200–End	(869–026–00123–5)	25.00	July 1, 1995
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34 Parts:			
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36 Parts			
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41 Chapters:			
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1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
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42 Parts:			
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43 Parts:			
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45 Parts:			
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46 Parts:			
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1994 to March 31, 1995. The CFR volume issued April 1, 1994, should be retained.